

**VOLUME I**

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1959**

**No. 74**

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**AMERICAN TRUCKING ASSOCIATIONS, INC.,  
ET AL., APPELLANTS,**

**vs.**

**UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL.**

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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**FILED MAY 22, 1959**

**PROBABLE JURISDICTION NOTED OCTOBER 12, 1959**



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 74

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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[fol. 1] [File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 2534-'58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., 1424 Sixteenth Street, N. W., Washington 6, D. C.; NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, 1000 Connecticut Ave., N. W., Washington 6, D. C.; CONVOY COMPANY, Box 348, San Jose, Calif.; ROBERTSON TRUCK-A-WAYS, INC., 7101 East Slauson Ave., Los Angeles 22, Calif.; HADLEY AUTO TRANSPORT, 21732 South Santa Fe Ave., Long Beach, Calif.; B & H TRUCKAWAY, 5127 Maywood Ave., Maywood, Calif.; WESTERN AUTO TRANSPORTS, INC., 430 South Navajo Street, Denver 23, Colorado; and KENOSHA AUTO TRANSPORT CORP., Box 351, Kenosha, Wis., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Washington 25, D. C., Defendants.

COMPLAINT TO SET ASIDE ORDER OF INTERSTATE COMMERCE COMMISSION—Filed October 7, 1958

Come now American Trucking Associations, Inc., the Contract Carrier Conference of American Trucking Associations, Inc., National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., and for their cause of action state:

**I**

**Jurisdiction**

This is an action to suspend, enjoin, annul and set aside a report and order of the defendant, Interstate Commerce

Commission, and arises under the provisions of Section 205(g) of the Interstate Commerce Act, 49 U.S.C. §305(g), Section 10 of the Administrative Procedure Act, 5 U.S.C. §1009, and Sections 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code, 28 U.S.C. §§1336, 1398, 2284 and 2321 to 2325. The United States of America is named as a defendant pursuant to Section 2322 of the Judicial Code, 28 U.S.C. §2322.

[fol. 2]

## II

### Parties

American Trucking Associations, Inc., is the national organization of the trucking industry, representing all types of motor carriers of property. Organized and existing as a non-profit corporation under the laws of the District of Columbia, it maintains offices at 1424 Sixteenth Street, N. W., Washington 6, D. C.

The Contract Carrier Conference of American Trucking Associations, Inc., is an incorporated association of motor contract carriers engaged in interstate transportation under permits issued by the Interstate Commerce Commission. The Conference maintains offices at 1424 Sixteenth Street, N. W., Washington 6, D. C.

National Automobile Transporters Association is a non-profit organization including in its membership substantially all motor common carriers engaged in the transportation of automobiles and related commodities throughout the United States. The Association maintains offices at 1000 Connecticut Ave., N. W., Washington 6, D. C.

Convoy Company, San Jose, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Robertson Truck-A-Ways, Los Angeles, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.



Hadley Auto Transport, Long Beach, California, is a contract carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

[fol. 3] B & H Truckaway, Maywood, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Western Auto Transports, Inc., Denver, Colorado, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Kenosha Auto Transport Corp., Kenosha, Wisconsin, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

### III

#### Statement

By application filed under Section 209 of the Interstate Commerce Act, 49 U.S.C. §309, Pacific Motor Trucking Company, the wholly-owned motor-carrier subsidiary of the Southern Pacific Company, a common carrier by railroad, hereinafter called the Railroad, sought authority from the defendant, Interstate Commerce Commission, to engage in unrestricted trucking operations, as a motor contract carrier of new automobiles, trucks and buses, from General Motors plants at Oakland, South Gate and Raymer, California, to points in the States of Arizona, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington. The application was docketed as MC-78787 (Sub-No. 37), and hearings on the application were held on February 20, 21, 25, and 26, 1957, at San Francisco, California.

By similar applications, Pacific Motor Trucking Co. had previously sought other unrestricted authority (1) from

Oakland, California, to points in Oregon which are stations on the rail lines of its parent railroad; (2) from Oakland, Calif., to Austin, Tonopah, and Yerington, Nev.; and (3) from Raymer (Los Angeles), Calif., to points in Arizona which are stations on the rail lines of its parent railroad. [fol. 4] These applications were docketed as MC-78787 (Sub-Nos. 34, 35, and 36), respectively. After the issuance of recommended reports in the four cases, the defendant Interstate Commerce Commission by order of August 16, 1957, consolidated the proceedings in No. MC-78787 (Sub-Nos. 34, 35, 36, and 37) for disposition in one report. Oral argument was had before the Commission on December 4, 1957.

On September 17, 1958, the Commission issued its report and order dated September 9, 1958 (Appendix A), complained of herein.\* In substance, the report and order authorizes the Railroad, through its wholly-owned subsidiary, Pacific Motor Trucking Company, to transport automobiles and trucks in unrestricted trucking operations from General Motors plants at Oakland, South Gate and Raymer, California, to points in the States of Arizona, Nevada, New Mexico, Oregon and Utah. Plaintiffs have exhausted their administrative remedy before the Interstate Commerce Commission, and the permit authorized by the report and order complained of will be issued by the Commission unless the said report and order is suspended, enjoined, annulled and set aside and the issue of the permit enjoined by this Court.

#### IV

#### Allegations of Error

The defendant Interstate Commerce Commission, in making and issuing the report and order complained of exceeded its powers and authority delegated under law and erred in the following particulars:

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\* A corrected Sheet 31, included herewith as part of Appendix A, was issued September 22, 1958.

(a) The finding that the unrestricted operations which Pacific Motor Trucking Company is authorized to perform as a contract carrier by motor vehicle, as more fully described in the report, will be consistent with the public interest and the national transportation policy, is unsupported by and contrary to the evidence of record and is contrary to the law, to wit, the National Transportation Policy and Sections 5(2)(b), 209, and 210 of the Interstate Commerce Act, 49 U.S.C. preceding §1, §5(2)(b), §309, and §310, in that:

[fol. 5] (1) The evidence before the Commission and the report complained of, clearly show that there is a great amount of existing authorized motor carrier service available to transport the traffic involved;

(2) The report and order arbitrarily and unlawfully protects rail protestants against invasion and competition, but fails to extend similar protection to independent motor carrier protestants;

(b) The report and order of the Commission fails to give effect to the Congressional policy against common ownership and control of competing transportation media, in that it permits the Railroad to own and operate a motor carrier performing substantial operations completely divorced from those of the railroad, without evidence of record to support a finding that special circumstances justify an exception to the Congressional policy;

(c) The report and order of the Commission fails to give effect to the provisions of Section 210 of the Interstate Commerce Act, 49 U.S.C. §310, respecting dual operations, designed and intended to preclude the authorization, under common ownership and control, of both common and contract operations under circumstances affording an opportunity for undue preference and unjust discrimination;

(d) The report and order of the Commission fails to recognize and preserve the inherent advantages of motor carrier transportation, hinders the establishment of sound competitive conditions and promotes monopoly in trans-

portation contrary to the provisions of the National Transportation Policy, in that it confers an absolute monopoly upon the Railroad and its motor subsidiary between Oakland, South Gate and Raymer, California, and the destination states involved, in the transportation of automobile traffic involving tens of thousands of vehicles annually;

(e) For the reasons set forth, the report and order complained of is not in accordance with law or with the evidence, is unreasonable, arbitrary, capricious, and constitutes an abuse of discretion.

[fol. 6]

V.

### Prayer for Relief

Wherefore, plaintiffs respectfully pray:

(a) That in accordance with Rule 4 of the Federal Rules of Civil Procedure this Court order process to issue against the defendants, Interstate Commerce Commission and the United States of America;

(b) That in accordance with Section 2284(1) of Title 28 of the United States Code this Court immediately notify the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit who shall designate two other judges, at least one of whom shall be a Circuit Judge, to serve as members of the Court to hear and determine this action;

(c) That in accordance with Section 2284(3) of Title 28 of the United States Code this Court issue a temporary restraining order, to remain in force until the hearing and determination of the full Court, to prevent the defendant Interstate Commerce Commission from issuing a permit to Pacific Motor Trucking Company allowing institution of the operations authorized by the report and order complained of;

(d) That in accordance with Section 2324 of Title 28 of the United States Code and Section 10 of the Admin-

Administrative Procedure Act, 5 U. S. C. §1009, the full court, after hearing, enjoin the defendant Interstate Commerce Commission from issuing a permit to Pacific Motor Trucking Company allowing institution of the operations authorized by the report and order complained of, pending final hearing and determination of this action;

(e) That upon final hearing of this action judgment be entered to permanently suspend, enjoin, annul, and set aside the report and order of the defendant Interstate Commerce Commission, complained of herein, and that the Court remand this matter to the Commission for further proceedings consistent with the Court's opinion;

[fol. 7] (f) That the Court grant such further relief as it deems just and proper.

Respectfully submitted,

American Trucking Associations, Inc. and its Contract Carrier Conference;

Peter T. Beardsley, 1424 Sixteenth Street, N. W., Washington 6, D. C.;

Charles W. Singer, 1825 Jefferson Place, N. W., Washington, D. C.,

Attorneys.

National Automobile Transporters Association; Convoy Company; Robertson Truck-A-Ways, Inc.; Hadley Auto Transport; B & H Truckaway; Western Auto Transports, Inc.; Kenosha Auto Transport Corp.;

Walter N. Biehman, 2150 Guardian Building, Detroit 26, Michigan;

Larry A. Eskilsen, 1111 E Street, N. W., Washington 4, D. C.,

Attorneys.



## INTERSTATE COMMERCE COMMISSION

No. MC-78787 (Sub-No. 34)<sup>1</sup>

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Decided September 9, 1958.

1. Upon reconsideration, in No. MC-78787 (Sub-No. 34), findings in prior report, 71 M.C.C. 561, affirmed. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks, except trailers, in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to named points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. In No. MC-78787 (Sub-No. 35), operation by applicant as a contract carrier by motor vehicle of automobiles, and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified plant site in Oakland, Calif., to Austin, Tonapah, and Yerington, Nev., over irregular routes, found consistent with the public interest and the national transportation policy.
3. In No. MC-78787 (Sub-No. 36), operation by applicant as a contract carrier by motor vehicle, of automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified

<sup>1</sup> This report also embraces No. MC-78787 (Sub-No. 35), Pacific Motor Trucking Company Extension—New Motor Vehicles to Additional Nevada Points, No. MC-78787 (Sub-No. 36), Pacific Motor Trucking Company Extension—New Motor Vehicles, Raymer, Calif., to Arizona, and No. MC-78787 (Sub-No. 37), Pacific Motor Trucking Company Extension—Automobiles—California Assembly Plants to 7 Western States.

plant site in Raymer, Calif., to named points in Arizona, found consistent with the public interest and the national transportation policy.

4. In No. MC-78787 (Sub-No. 37), operation by applicant as a contract carrier by motor vehicle, in initial movements, in truckaway and driveaway service, (1) of automobiles and trucks, except trailers, (a) from a  
Sheet 2  
[fol. 9] specified plant site in Oakland, Calif., to named points in Arizona, New Mexico, and Utah and (b) from a specified plant site in Raymer, Calif., to named points in Nevada, New Mexico, Oregon, and Utah, and (2) of automobiles, in truckaway and driveaway service, from a specified plant site in South Gate, Calif., to named points in Arizona, Nevada, Oregon, and Utah, found consistent with the public interest and the national transportation policy.
5. Holding by applicant of the permits authorized herein and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.
6. Issuance of the permits authorized herein approved upon compliance by applicant with certain conditions, and applications in all other respects denied.

*William Meinhold, Stanfield Johnson, Thormund M. Miller, Robert L. Pierce, and Edward M. Reidy* for applicant.

*Walter R. Frizzell* for intervenor in support of the application Nos. MC-78787 (Sub-Nos. 35, 36, and 37).

*Henry L. Hogan* for same intervenor in No. MC-78787 (Sub-Nos. 36 and 37).

*Phil Jacobson, Peter T. Beardsley, Fritz R. Kahn, G. G. Andersen, R. W. Cronon, John J. Burchell, Frank S. Farrell, Clair G. Anderson, Louis E. Smith, Marvin Handler, Walter N. Bienaman, Clarence D. Todd, Charles W. Singer, Joseph E. Earp, and Charles B. Myers* for protestants and intervenors in opposition.

*John G. Lyons* for intervenor in opposition in No. MC-78787 (Sub-No. 34), and as its interests might appear in No. MC-78787 (Sub-Nos. 35, 36, and 37).

*Reginald L. Vaughn* for intervenor as its interest might appear in No. MC-78787 (Sub-No. 37).

REPORT OF THE COMMISSION ON ORAL ARGUMENT<sup>2</sup>

By the Commission:

These four related applications were orally argued on a consolidated record and will be disposed of here in one report. The Sub 35 and 36 applications were heard on a consolidated record and the Sub 34 and 37 applications on separate records. The title proceeding has been the subject of a prior report on oral argument, 71 M.C.C. 561.

No exceptions were filed to the examiner's recommended order in the Sub 35 proceeding but it was stayed by us. The Sub 36 and 37 applications have been the subject of

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[fol. 10] recommended reports, to which exceptions and replies have been filed. General Motors Corporation, hereinafter called General Motors, supports, and American Trucking Associations, Inc., and Contract Carrier Conference of American Trucking Associations, Inc., hereinafter called ATA and the Conference, respectively, oppose the applications. Our conclusions differ slightly from those recommended in each proceeding. Exceptions, contentions, and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By the title application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet Plants Nos. 1 and 2 in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, hereinafter called Southern Pacific, over irregular routes.

In the Sub 35 application filed March 5, 1956, as amended, the same applicant seeks a permit authorizing

<sup>2</sup> On reconsideration and oral argument in the title proceeding.



operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, from Oakland, Calif., to Austin, Tonapah, and Yerington, Nev., over irregular routes. Dallas & Mavis Forwarding Co., Inc., opposed this application at the hearing.

By its Sub 36 application filed March 9, 1956, as amended, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier

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[fol. 11] by motor vehicle of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, from Raymer, Calif., to points in Arizona which are stations on the rail lines of Southern Pacific, over irregular routes. Robertson Truck-A-Ways, Inc., a motor common carrier, and two motor contract carriers, B & H Truckway and Hadley Auto Transport, hereinafter called Robertson, B & H, and Hadley, respectively, oppose this application.

In the Sub 37 application filed October 23, 1956, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle (1) of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the sites of the General Motors Chevrolet plants at Oakland, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Oregon and Nevada which are stations on the rail lines of Southern Pacific, and except Carson City, Minden, Austin, Tonapah, and Yerington, Nev., and (b) from the site of the General Motors Chevrolet Plant at Raymer, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Arizona which are stations on the rail lines of Southern Pacific; and (2) new automobiles, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Buick-Oldsmobile-Pontiac Plant at South Gate, Calif., to points in Arizona, Idaho, Montana, Nevada, Oregon, Utah, and Washington, over irregular routes. Nine carriers by railroad, nine motor carriers, and National

Automobile Transporters Association, hereinafter called NATA, oppose the application. Insured Transporters, Inc., intervened as its interest might appear in all proceedings.

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[fol. 12] Preliminary Discussion

*Sub-No. 34.* In the prior report in the Sub-34 application we found that applicant should be granted a permit authorizing the transportation of automobiles and trucks, in initial movements, in truckaway service, from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific, over irregular routes; and that the holding by applicant of such permit and those heretofore issued to it, and of certificates heretofore issued to it authorizing motor common carrier operations in the same territory, would be consistent with the public interest and the national transportation policy. Thereafter, upon petitions of ATA and the Conference, to which applicant replied, we reopened this proceeding for reconsideration on the present record solely with respect to whether the motor-contract carrier authority granted therein should be made subject to the substituted-service restrictions usually imposed in certificates issued to rail carriers or motor affiliates of rail carriers. Subsequently this proceeding and the three other applications covered by this report were the subject of oral argument.

In their petitions in the Sub 34 proceeding and on oral argument, ATA and the Conference contend (1) that the policy laid down by the Congress of restricting the motor carrier operations of rail carriers or their subsidiaries to service which is auxiliary to and supplemental of rail service, as indicated in section 5(2)(b) of the Interstate Commerce Act, consistently has been recognized by the Commission as being applicable to applications for common carrier authority filed under section 207, and should be recognized as being equally applicable to requests for contract carrier authority filed under section 209; and (2) that

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[fol. 13] the Commission is without statutory sanction to allow railroads or their affiliates to perform unrestricted

motor contract carrier service, i.e., service which is not auxiliary to or supplemental of train service, whether the authority to perform such service is obtained through the medium of purchase under section 5(2)(b) or as the result of an application filed under section 209. In reply applicant maintains that all issues arising under section 209 have been determined in the administrative consideration of the Sub 34 application, and that approval of unrestricted authority would be in conformity with prior decisions<sup>3</sup> of the Commission granting it similar authority.

*Sub-Nos. 35 and 36.* The examiner recommended that the Sub 35 application be granted, but restricted the origins to be served to the sites of the General Motors Chevrolet Plant in Oakland. No exceptions were filed to the order recommended by the examiner, but it was stayed by division 1, in order to give consideration to the question of dual operations.

The joint board recommended that the Sub 36 application be granted, but with service at origin restricted to the plant site of the General Motors Chevrolet plant at Raymer. On exceptions, the opposing motor carriers urge that the board erred (1) in failing to find that there are existing carriers authorized and equipped to render the proposed service.

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[fol.14]. (2) in recommending that applicant be granted authority to serve only those Arizona consignees at rail points, thereby discriminating against consignees at other points, (3) in recommending that driveaway service be authorized because no need therefor has been shown, (4) in finding that existing carriers would not be prejudiced by the recommended grant of authority, (5) in concluding that a grant of the application is justified since a denial would result in the continued movement of the traffic by Southern Pacific, and (6) in predicated such grant upon the fact that Southern Pacific maintains shipping facilities adjacent

<sup>3</sup>*Pacific Motor Trucking Co., Extension of Operations—Automobiles*, 42 M.C.C. 911 (1943); *Pacific Motor Trucking Co., Extension—New Automobiles, Trucks, and Busses, Los Angeles to San Ysidro and Calexico*, 51 M.C.C. 860 (1950); *Pacific Motor Trucking Co., Extension—Raymer to Los Angeles Harbor*, 51 M.C.C. 861 (1950); and *Pacific Motor Trucking Co., Extension—Carson City and Minden, Nev.*, 63 M.C.C. 851 (1955).

to the plant site. In a joint reply applicant and General Motors aver that the evidence supports the board's recommendation and urge that it be approved.

*Sub-No. 37.* In the Sub 37 application the examiner recommended a grant of contract-carrier authority to transport (1) automobiles, trucks, and buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the site of the General Motors Chevrolet Plant No. 1 at Oakland to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Chevrolet Plant at Raymer to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors' Buick-Oldsmobile-Pontiac Plant at South Gate to points in Arizona, Nevada, Oregon, and Utah, over irregular routes, with service restricted in each instance to points which are stations of the rail lines of Southern Pacific.

Applicant and General Motors filed exceptions to the recommended partial denial of this application, and the opposing rail carriers separately, and Convoy Company, Western Auto Transports, Inc., and Kenosha Auto Transport Corporation, hereinafter called, respectively, Convoy,

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[Vol. 15] Western, and Kenosha, jointly replied. The contentions advanced by these parties on oral argument are for all practical purposes the same as those set forth in the last-mentioned exceptions and replies. Applicant asserts that the examiner erred in denying authority to points which are off the rail lines of Southern Pacific and in failing to grant authority to all points covered by this application. Specifically, it argues (1) that the traffic involved accounts for only an insignificant fraction of the total operating revenues of the rail carriers connecting with Southern Pacific, (2) that there is nothing of record to indicate that a grant of the authority sought would seriously impair the operations of any of the rail protestants, (3) that applicant's past operations under contract for General Motors have been conducted at rates which provided a substantial margin of profit, (4) that there is no basis for the examiner's assumption that if unrestricted authority were

granted, Southern Pacific would be in a position to deprive its rail connections of participation in the traffic by manipulating the rates of its motor contract-carrier subsidiary, (5) that the examiner's findings fail to give adequate recognition to shipper's need for the proposed service to points not on the rail lines of Southern Pacific, (6) that the restriction against such service is arbitrary and unrealistic in that there is a manifestly greater need for truck transportation to such points than to those served by Southern Pacific, and (7) that a denial of the application to the extent recommended by the examiner would subject both it and Southern Pacific to irreparable damage inasmuch as the shipper has indicated that it will institute proprietary operations or support the application of another motor contract carrier, with no rail affiliation, if the recommended findings are

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[fol. 16] affirmed. General Motors challenges the imposition of the aforementioned restriction and the denial of authority to serve points in Idaho, Montana, and Washington, arguing that 80 percent or more of its dealers are located at points off the rail lines of Southern Pacific.

In reply the opposing rail carriers maintain that all of applicant's present contract-carrier authority is restricted to Southern Pacific points, except that to Carson City and Minden, Nev., which are not on the line of any railroad; that the application represents an attempt by Southern Pacific, through its motor subsidiary, to invade the territory of other railroads; that existing rail service cannot be deemed inadequate in face of shipper's continued use of such service to points in California and Oregon which applicant can presently serve; that a substantial volume of traffic would be diverted from the rail connections of Southern Pacific to applicant if the restriction is lifted; and that an undesirable situation would be created whereby Southern Pacific could through its subsidiary give a rate preference to General Motors on outbound shipments of finished automotive vehicles from its three California assembly plants, while at the same time applying the published common carrier rail rates on shipments handled as a rail carrier for other automobile manufacturers. Western, Convoy, and Kenosha in a joint reply say that the application should be denied in its entirety, generally for the reasons advanced



in the exceptions filed by Convoy and other opposing parties, which are summarized below.

Exceptions to the recommended partial grant of authority were separately filed by Convoy, ATA, the Conference, and NATA, and jointly by Robertson, Hadley, and B & H. The joint exceptants advance substantially the same arguments as were made by them in the Sub 36 proceeding.

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[fol. 17] The other exceptants collectively contend (1) that existing motor carrier services have not been shown to be inadequate, (2) that the supporting shipper herein should not be permitted, through the expression of a mere preference, to obtain an additional carrier without regard to the adequacy of existing transportation facilities, (3) that the recommended findings are discriminatory, protecting the interests of the connecting rail lines, but authorizing a new and competing operation into a territory already served by a large number of regulated motor carriers, (4) that the examiner failed to give effect to the statutory prohibition contained in the proviso of section 5(2)(b) against unrestricted truck operations by railroads or their affiliates, (5) that the proposed dual operations by applicant and its parent railroad presents the opportunity for unfair competitive practices in violation of section 210, and (6) that the granting of the application will enable Southern Pacific and applicant to maintain a virtual monopoly in the transportation performed by them for General Motors to and from its three California assembly plants. The Conference argues that the application should be either denied in its entirety or restricted in such manner as to make the proposed service auxiliary to or supplemental of the rail service of Southern Pacific. NATA takes the position (1) that motor contract carrier subsidiary of a railroad should not be permitted to extend its operations except upon a specific showing that no other transportation service is available to the shipper, and (2) that approval of the application will be followed by unlawful, discriminatory and destructive rate and pricing practices among competing transporters and automobile manufacturers in the involved territory, contrary to the public interest and national transportation policy.

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[fol. 18] In reply applicant contends (1) that because of the proximity of its receiving facilities and the integration of its service with shipper's operations, it is the only carrier that can adequately meet shipper's requirements for additional truck service, (2) that the opposing motor carriers are unable, either individually or collectively, to furnish the complete service desired; (3) that section 209 contains no specific provision requiring the imposition of unusual restrictions in permits issued to motor carrier subsidiaries of railroads, (4) that contract carriage by its very nature cannot be auxiliary to, or supplemental of rail service, and (5) that the grants of contract carrier authority in *Scott Bros., Inc., Extension of Operation—Jersey City*, 34 M.C.C. 163, to a motor subsidiary of the Pennsylvania Railroad and to itself in prior application proceedings without any restriction based upon rail ownership are controlling on the issue herein. Applicant further contends that the proposed dual operations are consistent with the public interest and the national transportation policy; that at no time has any person, shipper, or carrier charged it with any of the practices impliedly interdicted by section 210; that the situation which would result from a grant of authority here is no different from that prevailing in California and Oregon at the time its previous dual operations were approved; and that it is willing to have its outstanding certificates restricted so as to exclude the right to transport assembled automobiles, trucks, and buses. General Motors in its reply asserts that protestants' allegations of error in the examiner's reports are without support in the record.

The evidence adduced in the Sub Nos. 35, 36, and 37 proceedings, the examiner's or board's recommendations there-

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[fol. 19] in, and the exceptions and the replies thereto in the Sub-Nos. 36 and 37 proceedings have been considered. We find the examiner's or board's statement of facts in each proceeding, as corrected and supplemented below, to be adequate so far as necessary to a determination of the issues presented and adopt them as our own. Such facts and those set forth in the prior report in the title proceeding will be restated herein only to the extent necessary for a clear understanding of the issues presented.

### Present and Proposed Operations of Applicant

Applicant, a wholly-owned subsidiary of Southern Pacific Company, a common carrier by railroad, presently holds various certificates issued by this Commission authorizing the transportation as a common carrier of general commodities, with certain exceptions, between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes paralleling generally the rail lines of Southern Pacific. This common-carrier authority, except between certain origins and destinations in Oregon and California, is, with minor exceptions, restricted to service which is auxiliary to or supplemental of the rail service of its proprietary railroad. Applicant also holds permits authorizing operations as a contract-carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveway and truckaway service, (1) from Oakland to Hawthorne, Carson City, and Minden, Nev., and points in Nevada which are stations on the rail lines of Southern Pacific, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its present contract carrier operations are performed for General Motors from assembly plants at Oakland, South Gate, and Raymer, Calif., in equipment especially designed for that purpose and dedicated to shipper's exclusive use.

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[fol. 20] On January 3, 1958, division 1 found that applicant's operations, as of that time, were in conformance with the definition of a contract carrier in section 203(a)(15), as amended August 22, 1957, and which reads:

The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or



(b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

Applicant proposes to render a service only for General Motors, the only shipper it presently serves, and to assign its equipment to the exclusive use of that shipper. Clearly its proposed service will be that of a contract carrier. In accordance with section 209(b), as amended, any authority granted to applicant in these proceedings will be limited to service for General Motors. Upon a review of all of the evidence of record, we conclude that subject to a discussion hereinafter of the dual operations issue under section 210 and certain other matters, a need has been established by the supporting shipper in the Sub 34 and Sub 35 proceedings for the transportation of automobiles and trucks, in initial movements, from the site of General Motors' Plant No. 1 at Oakland (1) in truckaway service to points in Oregon which are stations in the lines of the Southern Pacific; and (2) in truckaway and driveaway service to Austin, Tonapah, and Yerington. No need has been shown for the proposed transportation of buses.

In the Sub 36 application, applicant proposes to transport new automobiles and trucks from the General Motors Chev-

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[fol. 21] rolet plant at Raymer to dealers located at points in Arizona which are stations on the lines of the Southern Pacific. General Motors has used applicant's service exclusively for the motor transportation of its vehicles to various points in California and Nevada. It has shipped automobiles and trucks to the considered Arizona points principally by rail via Southern Pacific, but desires the proposed service in order to effect faster as well as more direct deliveries to its dealers. It also expects to have some need for driveaway service in the movement of oversized chassis too big to load in a boxcar or on a truck. Its plant at Raymer is adjacent to yard facilities owned by Southern Pacific and leased to applicant. Inasmuch as extensive storage facilities are not maintained at the Raymer plant, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers. For these reasons, shipper desires the exclu-

sive service of one contract carrier so that there will be close cooperation and no division of responsibility. Use of any other carrier would require outgoing shipments to be dispatched through shipper's incoming gate, causing confusion and disarranging the operations at the plant which are geared to the use of applicant's service from its nearby yard. During the first 6 months of 1956, the Raymer plant shipped 4,452 units by rail to points in Arizona on the lines of Southern Pacific as compared with 792 units, or approximately 15 percent of the total, to other Arizona points.

Exceptants are authorized to conduct the proposed operations, have equipment suitable for the transportation of shipper's vehicles, and are experienced in transporting the considered commodities. Robertson transports vehicles principally for the Chrysler Corporation; Hadley is under

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[fol. 22] contract with and serves principally the Ford Motor Company; and B & H's contract carrier service has been rendered principally for the Studebaker-Packard Corporation, which ceased assembling vehicles in this area approximately 30 days prior to the hearing herein.

In our opinion, the evidence reasonably establishes that General Motors requires from its Raymer plant a personalized service in the movement of its automobiles and trucks similar to that which is presently being rendered by applicant from other points. Applicant has served General Motors as a contract carrier for a number of years and a grant of the authority sought would enable it to furnish a needed enlarged service. Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse effect on existing motor carriers. Since the evidence relates only to a need for service from the General Motors-Chevrolet plant at Raymer, any authority granted will be limited to that plant site as the point of origin and as above indicated will be restricted to service for a named shipper. Driveaway service and truckaway service are required by General Motors and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.

By its Sub 37 application applicant desires to enlarge the service proposed under its Subs 34, 35, and 36 applica-

tions from the General Motors Chevrolet plants at Raymer and Oakland to cover all points in the destination States rather than only to those which are stations on the rail lines of Southern Pacific. It also proposes a new service from the General Motors Buick-Oldsmobile-Pontiac plant at South Gate. In addition to its Raymer and Oakland plants, General Motors maintains a plant for the assembly of Buick, Oldsmobile, and Pontiac automobiles at South Gate. The

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[fol. 23] two Oakland plants are within the corporate limits of that city, and are designated as Plants Nos. 1 and 2. Plant No. 1, so far as applicant is concerned, is the shipping point for both plants. The Raymer plant is in Los Angeles, Calif., at a rail point known as Raymer, and the South Gate Plant is in South Gate, a point just outside Los Angeles. A small number of the automobiles and trucks manufactured at these three plants move on government bills of lading in which the government agency concerned rather than General Motors designates the transporter. These shipments have for the most part been handled by existing motor common carriers, including Convoy, Insured Transporters, and Robinson. The table below shows the total production and the number of vehicular units shipped from the Oakland and Raymer plants to points in the destination States covered by the Sub 37 application in 1955, not including interstate points presently served by applicant.

<i>Destination States</i>	<i>Automobiles and Commercial Vehicles</i>	
	<i>Oakland</i> (number)	<i>Raymer</i> (number)
Arizona .....		2,453
Idaho .....	5,292	2,454
Nevada .....	122	885
New Mexico .....		165
Oregon .....	5,401	297
Utah .....	41	6,113
Washington .....	24,805	473
Total .....	35,661	12,840
Total Plant Production	125,516	122,649

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[fol. 24] Production at the South Gate plant in 1955, is not shown of record. Actual movements by rail from the latter

plant to points covered by the Sub 37 application for the first 3 months of 1955 were: 1,114 units to Arizona, 246 to Idaho, 36 to Montana, 550 to Nevada, 3,118 to Oregon, 221 to Utah, and 2,857 to Washington. Service with connecting rail carriers is required for deliveries in Washington, Idaho, Montana, eastern Oregon, southern Nevada, Utah, northern Arizona, and New Mexico. If the Sub 37 application is granted, all of the involved traffic moving by rail from Raymer and approximately one-half of that moving by rail from Oakland and South Gate would be diverted to applicant, with a concomitant decrease in the tonnage tendered to the connecting rail lines.

Applicant presently is providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California and to interstate points within the scope of its existing permits. Although it also holds temporary authority to serve points in Oregon, its service has not been used to that State. As at the Raymer plant, applicant's receiving yards are immediately adjacent to the loading platforms at the Oakland and South Gate assembly plants and its motor operations fully integrated with shipper's manufacturing operations at those plants. Its operating ratio and net profit, respectively, on its contract carrier operations for General Motors amounted to 87 percent and \$90,699 in 1953; 83.7 percent and \$119,375 in 1954; 86.8 percent and \$174,879 in 1955; and 87.9 percent and \$129,245 during the first 11 months of 1956.

The proposed service is supported by General Motors in order to obtain faster transportation on shipments requiring expedited handling; direct deliveries to dealers at

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[fol. 25] off-rail points; more flexible and expeditious handling of consolidated shipments; and to meet the competition of other automobile manufacturers, notably, Ford and Chrysler, which have motor service available. As in the Sub 35 and Sub 36 applications, shipper's representatives indicated that driveaway service will be required for occasional shipments of oversized vehicles too large to load in a boxcar or on a truck, and also for occasional emergency shipment of automobiles. Shipper desires the use of a motor contract carrier authorized to meet all of its requirements from each plant and is admittedly unwilling to utilize

other existing motor facilities. It alleges that the existing common carriers are unable to offer the personalized and integrated service provided by applicant; that the services of the existing contract carriers are in some instances dedicated to service for its competitors; and that none of these carriers is as conveniently located for receiving its production as applicant. Should the requested authority be denied, General Motors indicates that it will either support the application of an independent motor contract carrier presently serving a branch plant at Arlington, Tex., identified as Texas Auto Transports, Inc., for similar authority, or institute proprietary operations.

Six rail and seven motor protestants presented evidence in opposition to the Sub 37 application. The rail protestants are (1) the Union Pacific Railroad Company which connects with Southern Pacific at Los Angeles and serves points in Nevada, Utah, Idaho, and Montana, (2) the Northern Pacific Railway Company which connects with Southern Pacific at Portland, Oreg., and serves points in Washington, Idaho, and Montana, (3) the Great Northern Railway Company which connects with Southern Pacific at Portland

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[fol. 26] and there receives traffic moving to destinations in Washington, Idaho, and Montana, (4) the Spokane, Portland & Seattle Railway, hereinafter called S P&S, a jointly-owned subsidiary of Great Northern and Northern Pacific, operating between Portland, Oreg., and Spokane, Wash., (5) the Bamberger Railroad Company, hereinafter called Bamberger, connecting with Southern Pacific at Ogden, Utah, and operating between Ogden and Salt Lake City, Utah, and (6) the Portland Traction Company, a short-line carrier serving the Portland, Oreg., area. For the fiscal year ending August 31, 1956, Union Pacific participated in the movement or delivery of 7,979 carloads of vehicular traffic from California points, the great majority originating at one or the other of the three General Motors California plants. All references to General Motors traffic in the discussion which follows relates to shipments of automobiles, trucks or buses from these three plants to points in the destination States named in the application. The gross revenues derived from the traffic handled for General Motors amounted to approximately \$1,073,000. In 1955,



Northern Pacific derived revenues of \$366,000 and Great Northern \$370,599 on General Motors traffic received from Southern Pacific, while in 1956 SP&S delivered 659 carloads, Bamberger 185 carloads, and the Portland Traction Company approximately 2,290 carloads, of General Motors traffic. The connecting-line railroads fear the loss of all or substantial portion of this traffic if the application is approved.

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[fol. 27] The opposing motor carriers are authorized and equipped to engage in truckaway or driveaway service and desire to participate in shipper's traffic to the extent of their operating rights. Convoy, a common carrier, holds initial authority to transport automobiles and trucks, in truckaway service, from Richmond, Calif., to points in Idaho, Oregon, and Washington, serving Oakland as a point in the Richmond commercial zone. It also holds secondary authority to deliver such vehicles to much of the destination territory here involved through interchange with motor carriers able to originate traffic at shipper's other California plants. Its terminal closest to Oakland is at San Jose, Calif., 30 miles away. It is willing, however, to establish terminal facilities at or near Oakland plant if assured sufficient traffic. It performs substantial truckaway operations for Ford from its plants at Maywood and Milpitas, Calif. Its authority from Richmond has been dormant since de-activation of the Ford plant at that point in 1955.

Transport Storage & Distributing Company is authorized to transport (1) new and used automobiles and trucks, in driveaway service, between Seattle, Wash., and points in Washington west of the summit of the Cascade Mountains, and Portland, and (2) automobiles and trucks, new or used, in secondary movements, in truckaway service, between Seattle, on the one hand, and, on the other, Portland and points in Washington, over irregular routes. It maintains warehouse and storage facilities at Seattle and Portland and operates, among other equipment, five trailers especially designed for transporting automobiles. Its operations consist of the storage, servicing, and delivery

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[fol. 28] to dealers of new automobiles and trucks arriving at Seattle and Portland by rail. It serves approximately 180 General Motors dealers in Washington, and is the exclu-

sive agent for all ten General Motors dealers in Alaska. It alleges that the granting of the application would result in a loss of 65 percent of its total traffic and force a discontinuance of its operations. During the fiscal year ending June 30, 1956, it sustained a net loss of \$6,746.

Hadley holds permits authorizing the transportation, in initial movements, in truckaway service, of automobiles from points in Los Angeles County, Calif., which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and of automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah.

B & H, a contract carrier, is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, Calif., an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements, from Vernon to points in Utah, Idaho, and Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone. Robertson holds certificated authority to transport automobiles and trucks, in initial movements, in truckaway service, from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon.

By agreement between the parties the evidence of the two opposing motor carriers next discussed and of NATA was submitted by verified statements. Western Auto Transports, Inc., hereinafter called Western, holds certificated authority to transport new automobiles and trucks, in

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[fol. 29] truckaway service in initial movements, from, among other points, Raymer and South Gate to points in Utah, and new automobiles, in truckaway service, in secondary movements, between points in California, Idaho, Nevada, Utah, and Washington. It maintains terminals at Los Angeles and Richmond and is fully equipped to handle the traffic. If requested by the traffic department of General Motors, it would file an application for authority to serve the General Motors plants at Los Angeles and Oakland to any destination territory beyond its present authority in the transportation of new automobiles and trucks in truckaway and driveaway service, as either a

common or a contract carrier. Kenosha Auto Transports Corporation, which apparently lacks any authority to serve shipper's California plants, is likewise willing to file application for common or contract carrier authority if requested so to do by General Motors.

Subsequent to the hearing herein, pursuant to the findings in *Insured Transporters, Inc., Ext.—Automobiles, Oakland*, 74 M.C.C. 577, Insured Transporters was issued a certificate in No. MC-107227 (Sub-No. 47), dated April 21, 1958, authorizing the transportation of automobiles, in initial movements, in truckaway service, from the sites of the General Motors assembly plants in Oakland to points in Arizona, California, Colorado, Montana, Nevada, New Mexico, Utah, and Wyoming, over irregular routes. This application was supported by various agencies of the United States Government, but not by General Motors.

NATA points out that with respect to the area involved in the instant application, the two other major automobile companies each have West Coast manufacturing plants

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[fol. 30] from which automobiles are distributed to points in western states; that Ford has plants at Maywood and Long Beach in the Los Angeles area and at Milpitas, Calif., in the San Francisco area; that Chrysler has a plant at Maywood; that the various rail carriers serving this territory, including Southern Pacific, publish group rates on automobiles from all manufacturing origins in the Los Angeles and San Francisco areas to common destinations; and that thus each automobile manufacturer is charged the same common-carrier rail rates as its competitors from such origins.

A review of the evidence in the Sub 37 proceeding establishes a need for applicant's proposed service in the movement of new automobiles and trucks from the sites of the three California assembly plants of General Motors at Oakland, Raymer, and South Gate only to those points in the destination States recommended by the examiner which are stations on the rail lines of Southern Pacific. We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of

the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand,

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[fol. 31] use by General Motors of applicant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. Shipper's argument that motor service is needed to nonrail points to meet the competition of other automobile producers can be accorded little probative weight in face of its continued refusal to make use of the available services of the protesting motor carriers. The fact that both General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby to block the use by other carriers of normal egress routes, has no bearing upon the adequacy or inadequacy of existing motor transportation facilities. On the other hand, insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. Motor protestants argue that the grant of authority to such points as recommended by the examiner reflects a discriminatory bias favoring the protesting railroads and penalizing the protesting motor carriers. However, it is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be



little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant

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[fol. 32] to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers.

Authority to transport trucks includes authority to transport trailers, and accordingly trailers will be excluded from any grant of authority herein. Although the need for driveaway service is not so great as that for truck-away, both are required by shipper and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.

#### General Discussion—Restrictions.

As seen, the proof in connection with each of the considered applications in our opinion justifies a grant of some authority. Protestants, however, in various pleadings and at oral argument contend that all four of the considered applications should be denied (1) because the proviso in section 5(2)(b)<sup>4</sup> must be read into section 209 and operates as a bar to the issuance of a contract carrier permit to an applicant railroad or an applicant railroad subsidiary, and (2) because the holding by applicant of the permits it seeks herein and its presently-held certificates would not be consistent with the public interest and the national transportation policy.

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[fol. 33] After careful study we are impelled to disagree. Our statutory authority to impose terms and conditions in permits issued under section 209 is derived from part (b) of that section, and not from section 5(2)(b). The rejection by the Commission of a similar contention with respect to section 207 in *Rock Island Motor Transit Co.*

<sup>4</sup> This provides that the Commission shall not authorize, a railroad or its affiliate to acquire a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."



*Com. Car. Application*, 63 M.C.C. 91, 100, was sustained by the United States Supreme Court on December 9, 1957, in *American Trucking Associations Inc., et al. v. United States*, 355 U.S. 141, subsequent to the argument in these cases. Therein the Supreme Court held that the Congress did not intend the rigid requirement of section 5(2)(b) to be considered as a limitation on certificates issued under section 207 but added (pp. 151-152):

\* \* \* that the underlying policy of section 5(2)(b) must not be divorced from proceedings for new certificates under section 207. Indeed the Commission must take "cognizance" of the National Transportation Policy and apply the Act "as a whole". But for reasons we have stated we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a section 207 proceeding.

Although the Court, in that proceeding, was dealing only with applications for common carrier certificates, we think that undoubtedly the same principle applies here where contract carrier permits are sought and in reaching the conclusions above indicated, namely, that some authority should be granted in each proceeding, we have, in fact, given due consideration to the National Transportation Policy and to the principles which underlie section 5(2)(b).

While we have power to impose restrictions in any permit granted authorizing motor contract carrier operations, such action is not required by either section 5(2)(b)

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[fol. 34] or the provisions of the National Transportation Policy; and it remains to be considered next whether any restrictions should be imposed here. The restrictions usually imposed in common carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point

not a station on the railroad, (3) a key point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail; (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service. However, it was granted by special circumstances certificates have been issued without these restrictions to railroads or their affiliates, whether acquired by purchase as in *Louisville, N. E. & C.R. Co., Purchase*, *Meerman*, 45 M.C.C. 6, and *Southern Pacific Company, Detroit*; *Pacific Motor Trucking Co., Purchase*, *Logan Trucking Co.*, 60 M.C.C. 373; or as the result of an

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fol. 35) application filed under section 207, as in *Texas & Pacific Motor Transport Co., Et. Point Blue, La.*, 47 M.C.C. 425, *Burlington Truck Lines, Inc., Et. Iowa*, 48 M.C.C. 546, and *Rock Island Motor Transit Co., Com. Car. Application, supra*.

It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 22 I.C.C. 683; *Willott Co., of Indiana, Inc., Extension*, *Ill. Ind., and Ky.*, 21 M.C.C. 405; *Louisiana, A & T. Ry. Co., Common Carrier Application*, 22 M.C.C. 213; *Hagerly Contract Carrier Application*, 26 M.C.C. 413, and *Sublet Extension*, *Woodbury and Elmer, N. J.*, 34 M.C.C. 340. In the two last cited proceedings, the applicants sought permits to transport less than carload freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or

supplemental of rail service. Since substituted service is common carriage at rail rate and on rail billing, all of the restrictions usually employed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings. On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor

[Sheet 29  
fol. 36] subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted preserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest. Nothing in *Scott Bros., Inc.*, *Extension of Operations, Jenson Co., supra*, or in the proceedings in which applicant herein obtained unrestricted contract carrier authority, is inconsistent with the foregoing.

### Dual Operations

The prior report in the Sub 34 proceeding fully discusses the dual operation question and needs little enlargement of repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted. Another wholly owned motor carrier subsidiary of Southern Pacific, Southern Pacific Transport Company, holds certificates in No. MC 36319 and various subnumbers thereto authorizing substituted motor-for-rail service auxiliary to or supplemental of the rail operations of Southern Pacific and those

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fol. 37] of an affiliated rail line, Texas & New Orleans

Railroad Company, generally over regular routes between specified points in Texas and Louisiana. The additional dual operations occasioned by the grants of contract-carrier authority herein would not be such an aggravation of the existing dual operations of applicant or between applicant and the commonly controlled Texas subsidiary as to require disapproval. Compare *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M.C.C. 473, 479, and *Complete Auto Transit, Inc.,—Extension, Willow Run*, 71 M.C.C. 383, 388.

As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier by rail. In the 54-page consolidated certificate issued to applicant in No. MC-78786, dated July 27, 1956, the 32 different commodity descriptions grouped together under an alphabetical key on sheets 37 through 39 include the descriptions "general commodities, except assembled automobiles" in descriptions F, K, L, Z-1, and Z-6, and "general commodities" with no exceptions referring to assembled automobiles and trucks in descriptions D, H, J, N, S, T, U, Y, Z, and Z-3. Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks, and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants

Sheet 31 [fol. 38] here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference.

## Findings

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of the commodities and from and to the points indicated in connection with each application as set forth in the appendix hereto, over irregular routes, limited to the performance of transportation under a continuing contract or contracts with General Motors Corporation, and subject to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions and limitations as the public interest and national transportation policy may require, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers

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[fol. 39] thereunder which are not specifically restricted against such transportation; and that the applications in all other respects should be denied.

We further find that the holding by applicant of the permits granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common carrier operations in the same territory, and the holding by Southern Pacific Transport Company of the certificates heretofore issued to it, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215, 218, and 221(c) of the act, with our rules and regulations thereunder, and with the requirements established in *Contracts of Contract Carriers*, 1 M.C.C. 628, appropriate permits will be issued. An order will be entered denying the applications except to the extent granted herein.

Freas, *Chairman*, concurring in part:

I concur in the action taken by the majority, but would go further.



The three plants, respectively established by General Motors in 1914, 1936, and 1947, are served by one rail carrier, Southern Pacific Company. In 1929, the Oakland plant commenced the use of a motor carrier whose operations were acquired by applicant herein in 1935. Applicant has continued to serve the Oakland plant in intrastate commerce since 1935 and also has served the other two plants in intrastate commerce since their establishment. In 1944, this Commission issued a permit to applicant authorizing the transportation of new automobiles,

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[fol. 40] trucks, and buses, in initial movements, from Oakland to Hawthorne, Nev., and points in Nevada which are stations on the rail lines of Southern Pacific Company. In 1950, similar transportation was authorized from Raymer to Los Angeles Harbor and from Los Angeles to Calexico and San Ysidro, Calif., and, in 1955, from Oakland to Carson City and Minden, Nev. General Motors pays the freight charges on shipments to its dealers and for all such traffic now employs either the rail service of Southern Pacific Company and its rail carrier connections or the motor carrier service of applicant. It appears also that protestant Transport Storage & Distributing Co. has been providing service from rail heads to points in Washington for General Motors dealers.

In maintaining service for General Motors, applicant at a substantial investment has acquired an equipment fleet of 317 units, together with receiving and storage yards located adjacent to and operated as integral parts of the plants, and has developed a trained organization of some 200 people devoted exclusively to the transportation needs of the three General Motors plants. Applicant's contract carrier operations are dedicated solely to service for General Motors. They have been conducted at a profit.

It is clear from the evidence that applicant has long been providing and is in position to render a bona fide contract carrier service of a highly personalized type particularly responsive to the distinct shipping requirements at the plants. Applicant's present operations are substantial and the proposed service is a logical and natural extension thereof, designed to meet the additional needs of the shipper.

The protesting motor carriers have obtained operating rights and acquired service facilities on the basis of the

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[fol. 41] transportation needs of automobile manufacturers other than General Motors, which manufacturers are competitive therewith. With one exception the existing motor carriers have handled only a very negligible amount of the freight involved. Such carriers will, therefore, suffer no loss of traffic as a result of the expanded service by applicant. A different result, however, will obtain in the instance of the rail carrier connections of Southern Pacific Company. The connecting rail carriers and protestant Transport Storage & Distributing Co. have shown that they will suffer loss of traffic and the corresponding revenues therefrom to the detriment of their services.

Considering and weighing, as we are now required to do under the amended provisions of section 209(b), the effect which granting the application would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and its shipper, as well as the changing character of the shipper's requirements, it is my opinion that the record justifies the issuance of a broader permit in No. MC-78787 (Sub-No. 37). In the latter proceeding I would grant applicant authority to all of the destination points sought, except those which are stations on the lines of the connecting rail carriers of Southern Pacific Company, but not stations on the lines of the latter, and except those in Washington served by Transport Storage & Distributing Co.

Arpaia, Commissioner, dissenting:

Congress declared it a policy that the various forms of transportation be kept separate and competitive. The

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[fol. 42] Commission has never deviated from applying this principle except where special and unusual circumstances demand it. The Supreme Court has confirmed this position in *American Trucking Associations v. United States*, 355 U. S. 141. It is for Congress and not for the Commission to change policy.

In the situation presented here, there are no special or unusual circumstances and the majority in effect, admits

this by granting a permit to the applicant, an affiliate of the Southern Pacific Company, for only a part of the service proposed. If true contract carriage were needed and the circumstances were compelling, then, logically, authority should be granted to all points to which the shipper professes a need for such service.

In essence, the majority has not only failed to follow Congressional policy but has misapplied the Congressional mandate. It has protected rail protestants against invasion and competition yet has failed to extend protection to the motor carrier protestants. To accomplish this result, on the same set of facts, the shipper is found to be adequately served in common carriage by existing rail connections. Such an anomalous result suggests inherent doubt as to the soundness of the majority's position. If the special circumstances which entitle the affiliate of a railroad to motor contract carrier authority are present, then there should be no compromise with the facts and the applicable principles.

*Commissioner MURPHY, with whom Commissioner McPHERSON joins, dissenting:*

I am unable to agree with the view of the majority that dual operations may be approved and this rail subsidiary granted unrestricted motor carrier authority.

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[fol. 43] Even if these issues were not present, I would be extremely reluctant to grant the authority sought as there has been no showing of a real need for the proposed service. There is adequate motor common and contract carrier service available and this record reflects nothing more than the shipper's preference for this applicant and its adamant refusal to utilize the services of other carriers.

The majority concedes that, in the absence of special circumstances, a grant of unrestricted motor common or contract carrier authority to a rail subsidiary is not justified; and I submit that in the face of the views expressed by the Supreme Court in *American Trucking Associations v. United States*, 355 U. S. 141, no other conclusion could possibly be reached. Obviously these special circumstances

must involve something more than, as in these proceedings, the fact that a shipper would prefer and find it convenient to utilize the services of a given carrier and that apparently a grant of authority would not have a material adverse effect on the operations of existing carriers. To satisfy this condition it must be shown that there is a compelling need for service that can only be met by the particular applicant. The grants of authority by this Commission in the *American Trucking Associations* case, *supra*, and in *Scott Brothers, Inc. Extension—Jersey City*, 34 M.C.C. 163, were based on findings that there was a total absence of satisfactory motor carrier service. There is no merit to the contention of the majority that its action here is consistent with these decisions.

The majority has limited the grant of authority to service of points on the lines of the Southern Pacific Railroad. This limitation cannot be a substitute for the necessity of

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[fol. 44] special or unusual conditions in these cases. This limitation merely defines the territorial scope of this grant of unrestricted motor carrier authority and is actually of little real substance since it will permit the applicant to provide service at a majority of the important traffic centers in the destination territory involved. To these points the service authorized will be wholly unrestricted and if such a grant is proper, simple logic requires a similar grant to off-line points sought by the applicant. The fact of the matter is, however, that a grant of unrestricted authority, regardless of its extent, is not justified on this record.

The objectionable dual operations involved provide a further reason for denying these applications. This question is dealt with summarily in the report even though it is doubtful that there has been a proceeding before us in which exhaustive consideration of this issue was more justified. We have consistently held that the propriety of approving dual operations is to be carefully considered in every proceeding in which this question arises, including those involving subsequent applications by a carrier now conducting dual operations with our approval, and is to be determined upon the basis of the particular circumstances of each case. I, therefore, do not consider of con-

trolling significance insofar as our disposition of this issue in the instant case is concerned the fact that dual operations by this carrier have been approved in several unopposed application proceedings involving relatively limited contract carrier operations. In my opinion, we would be entirely justified in withholding our approval of further expansion of this carrier's dual operations. The provisions of

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[fol. 45] section 210 were clearly designed to preclude the authorization of both common and contract operations by the same motor carrier under circumstances in which an opportunity for undue preference and unjust discrimination would be created or expanded. In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of section 210.

I, therefore, would deny the applications in their entirety.

COMMISSIONER MINOR, being necessarily absent, did not participate in the disposition of these proceedings.

COMMISSIONER WALRATH was necessarily absent but had he been present at the time of the adoption of the report by the majority he would have adhered to the position

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[fol. 46] taken by him in the prior report (71 M.C.C. 561), and, to the extent not inconsistent therewith, would have joined in the dissenting expressions of Commissioners Arpaia and Murphy.

COMMISSIONER GOFF did not participate in the disposition of these proceedings.



[fol. 47]

## APPENDIX

*Authority Granted*

## No. MC-78787 (Sub-No. 34)

Automobiles and trucks, except trailers, in initial movements, in truckaway service, from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of Southern Pacific Company.

## No. MC-78787 (Sub-No. 35)

Automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's Plant No. 1 at Oakland, Calif., to Austin, Tonopah, and Yerington, Nev.

## No. MC-78787 (Sub-No. 36)

Automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Arizona which are stations on the rail lines of Southern Pacific Company.

## No. MC-78787 (Sub-No. 37)

(1) automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, (a) from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's plant at South Gate, Calif., to points in Arizona, Nevada, Oregon, and Utah, with service restricted in each instance to points which are stations on the rail lines of Southern Pacific Company.

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## ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of September, A. D. 1958.

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

No. MC-78787 (Sub-No. 35)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
NEW MOTOR VEHICLES TO ADDITIONAL NEVADA POINTS

No. MC-78787 (Sub-No. 36)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
NEW MOTOR VEHICLES, RAYMER, CALIF., TO ARIZONA

No. MC-78787 (Sub-No. 37)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
AUTOMOBILES—CALIFORNIA ASSEMBLY PLANTS  
TO 7 WESTERN STATES

*It appearing*, That on May 8, 1957, the Commission made and filed its report on oral argument, 71 M.C.C. 561, and order in No. MC-78787 (Sub-No. 34), granting applicant a permit authorizing it to conduct certain operations as a contract carrier by motor vehicle, and denying the application in all other respects;

*It further appearing*, That on August 16, 1957, on further consideration of the records in the above-entitled proceedings, and of the petitions of American Trucking Associations, Inc., and the Contract Carrier Conference of American Trucking Associations, Inc., and the reply of applicant, the No. MC-78787 (Sub-No. 34) proceeding was reopened for reconsideration on the present record, but solely with respect to whether the motor contract-carrier authority granted therein should be made subject to the substituted service restrictions usually imposed in certificates issued to rail carriers or motor carrier affiliates of rail carriers, and the four above-entitled proceedings consolidated for disposition in one report;

*It further appearing,* That on November 6, 1957, the Commission assigned the above-entitled proceedings for oral argument on all of the issues involved, which was held December 4, 1957;

*And it further appearing,* That reconsideration of the matters and things involved in No. MC-78787 (Sub-No. 34) has been given, and that investigation of the matters and things involved in No. MC-78787 (Sub-Nos. 35, 36, and 37) has been made, and that the Commission, on the date hereof, having made and filed herein a consolidated report on oral argument containing its findings of fact and conclusions thereon, which report and the report of May 8, 1957, in No. MC-78787 (Sub-No. 34) are hereby referred to and made a part hereof:

*It is ordered,* That said applications, except to the extent granted in said report, be, and they are hereby, denied.

By the Commission.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 50]

INTERSTATE COMMERCE COMMISSION  
Washington, D. C.

September 22, 1958.

No. MC-78787 (Sub-No: 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

No. MC-78787 (Sub-No. 35)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
NEW MOTOR VEHICLES TO ADDITIONAL NEVADA POINTS

No. MC-78787 (Sub-No. 36)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
NEW MOTOR VEHICLES, RAYMER, CALIF., TO ARIZONA

No. MC-78787 (Sub-No. 37)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—  
AUTOMOBILES—CALIFORNIA ASSEMBLY PLANTS  
TO 7 WESTERN STATES

Notice to the Parties:

On September 17, 1958, copies of the report and order of the Commission on oral argument; filed and entered September 9, 1958, were served on interested parties. In reproducing copies of the report for service, certain errors were made in the findings on sheet 31. Please substitute the attached sheet 31 for the one contained in the copy of the report heretofore forwarded to you.

Harold D. McCoy, Secretary.

Att.

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[fol. 51] subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper

competitive situation or result in improper discrimination or preference.

### Findings

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of the commodities and from and to the points indicated in connection with each application as set forth in the appendix hereto, over irregular routes, limited to the performance of transportation under a continuing contract or contracts with General Motors Corporation, and subject to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions and limitations as the public interest and national transportation policy may require, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; and that permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and

[fol. 52]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF PACIFIC MOTOR TRUCKING CO. FOR LEAVE TO  
INTERVENE AS DEFENDANT—Filed October 8, 1958

Now comes the Pacific Motor Trucking Company, a corporation, of San Francisco, California, by Robert L. Pierce, T. A. Miller, William E. Meinhold, and Edward M. Reidy,



its attorneys, and moves the Court pursuant to Rule 24(a) of the Rules of Civil Procedure and 28 U. S. Code, Section 2323, for an order permitting it to intervene as a defendant in this action. In support of this motion, Pacific Motor Trucking Company alleges that:

1. Complaint herein seeks to annul and set aside an order of the Interstate Commerce Commission dated September 9, 1958, in proceedings entitled "Pacific Motor Trucking Company Extension—Oregon," No. MC-78787 (Sub-No. 34), and various sub. numbers specified in the report of the Commission.

2. Pacific Motor Trucking Company was the applicant in the proceedings before the Interstate Commerce Commission and upon whose application the Commission's order was made, and as such party in interest is entitled as a matter of right to intervene herein as defendant and to file answer pursuant to the provisions of 28 U. S. Code, Section 2323, and Rule 24(a) of the Rules of Civil Procedure.

Wherefore, Pacific Motor Trucking Company prays for an order of this Court granting its intervention as a defendant in this suit and permitting it to file an answer to the complaint herein, and to submit oral arguments and briefs, and to be treated in all respects as a defendant in this suit.

Respectfully submitted,

Robert L. Pierce, William E. Meinhold, 65 Market Street, San Francisco 5, Calif.;

Edward M. Reidy, T. A. Miller, 205 Transportation Bldg., Washington 6, D. C.;

Attorneys for Intervening Defendant, Pacific Motor Trucking Company.

[fol. 54]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF GENERAL MOTORS CORPORATION FOR LEAVE TO  
INTERVENE AS DEFENDANT—Filed October 8, 1958

Now comes the General Motors Corporation, of the State of Delaware, with headquarters at Detroit, Michigan, by Henry M. Hogan and Walter R. Frizzell, its attorneys, and moves the Court pursuant to Rule 24(a) of the Rules of Civil Procedure and 28 U. S. Code, Section 2323, for an order permitting it to intervene as a defendant in this action. In support of this motion, General Motors Corporation alleges that:

1. Complaint herein seeks to annul and set aside an order of the Interstate Commerce Commission dated September 9, 1958, in proceedings entitled "Pacific Motor Trucking Company Extension—Oregon," No. MC-78787 (Sub-No. 34), and various sub. numbers specified in the report of the Commission.

2. General Motors Corporation was an intervener in support of the application in the proceedings before the Interstate Commerce Commission, upon which application the Commission's order was made, and as such party in interest is entitled as a matter of right to intervene herein as defendant and to file answer pursuant to the provisions of 28 U. S. Code, Section 2323, and Rule 24(a) of the Rules of Civil Procedure.

Wherefore, General Motors Corporation prays for an order of this Court granting its intervention as a defendant [fol. 55] in this suit and permitting it to file an answer to the complaint herein, and to submit oral arguments and briefs, and to be treated in all respects as a defendant in this suit.

Respectfully submitted,

Henry M. Hogan, Walter R. Frizzell, 3044 W. Grand  
Boulevard, Detroit 2, Michigan, Attorneys for In-  
tervening Defendant, General Motors Corporation.

[fol. 56]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

—v.—

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Defendants.

ANSWER OF PACIFIC MOTOR TRUCKING COMPANY, INTERVENING DEFENDANT—Filed October 24, 1958

Now comes Pacific Motor Trucking Company (hereinafter referred to as PMT) which was permitted to intervene as a defendant in these proceedings by order of court dated October 8, 1958, and answers the complaint filed by plaintiffs as hereinafter set forth:

First Defense

1. Admits the allegations of paragraph I, but alleges that plaintiffs do not suffer legal wrong from, and are not [fol. 57] adversely affected or aggrieved by, the order of the Commission here sought to be set aside and that none of plaintiffs has any standing to bring this action.

2. Admits, on information and belief, the allegations of paragraph II, except denies that B & H Truckaway is a common carrier by motor vehicle and alleges that instead

it is a contract carrier by motor vehicle. For further answer alleges that the scope of the pertinent operating authority of the six plaintiff motor carriers is set forth in detail in the report of the Interstate Commerce Commission of September 9, 1958, herein, attached as Appendix A to the complaint. For further answer alleges that all of the plaintiffs participated in the proceedings before the Interstate Commerce Commission now sought to be reviewed and were given full opportunity to express their positions at the hearings or argument before that body; that the Commission fully considered their contentions in its report in these proceedings; that the Commission found that the traffic involved is now moving exclusively by railroad, that, regardless of whether this authority were granted to PMT, there would be little or no diversion of this traffic to independent truckers such as plaintiffs, and that the grant of operating authority to PMT authorized in such report should not in any degree adversely affect the operations of other motor carriers; that plaintiffs would not benefit from having the Commission's order here attacked set aside since the Commission further found in its report that General Motors Corporation, the sole shipper for whom the authorized service by PMT was to be performed, indicated that should the requested authority be denied it would either support the application of an independent motor contract carrier other than any of plaintiffs or else itself institute proprietary operations; and that consequently plaintiffs have no standing to bring this suit to [fol. 58] set aside the Commission's order in such proceedings.

3. Admits the allegations of paragraph III, except denies:

(a) that PMT in its application MC-78787 (Sub. No. 37) or in any other application referred to in such paragraph sought authority to conduct contract carrier operations from the General Motors plants in Oakland and Remyer, California, to points in Montana, or from the General Motors plant in South Gate, California, to any point in New Mexico, and refers the Court to the Commission's

report and order of September 9, 1958, for a more complete and accurate statement as to the scope of the operating authority sought by PMT in these proceedings; denies (b) that the Commission's report and order of September 9, 1958, authorized Southern Pacific Company, which was not a party to the proceedings, to conduct any transportation operations through its wholly-owned subsidiary, PMT, and alleges that all authority granted in said report and order was granted to PMT to be exercised in its own right; denies (c) that the Commission herein authorized PMT to conduct unrestricted trucking operations and alleges that, while the Commission held it was not authorized under section 209(b) of the Interstate Commerce Act (49 U.S.C. sec. 309(b) to impose in a contract carrier permit certain restrictions usually imposed by it in common carrier certificates issued to motor carrier affiliates of rail carriers, to insure that the service thereunder shall be no more than that which is auxiliary to or supplemental of train service, because that would convert PMT into a common carrier as to such operations, it nevertheless did impose another of such usual restrictions, that limiting PMT service to points on the rail lines of its parent company, Southern Pacific Company; and denied (d) that the Commission's report and order of September 9, 1958, authorized PMT [fol. 59] to conduct trucking operations from the General Motors plant in South Gate, California, to points in New Mexico, and for further answer alleges that the authority granted to PMT in these proceedings is set out as an appendix to the Commission's decision of September 9, 1958, and is as follows:

Transportation of automobiles and trucks, except trailers, in initial movements in truckaway service and driveaway service: (a) from General Motors plant No. 1 in Oakland, California, to points in Oregon (limited to truckaway service), Arizona, New Mexico, and Utah, which are stations on the rail lines of Southern Pacific Company, and to Austin, Tonopah and Yerington, Nevada; (b) from the General Motors Corporation plant at Raymer, California, to points in Arizona, Nevada, New Mexico, Oregon, and Utah, lo-



cated on the rail lines of Southern Pacific Company; and (c) from the General Motors plant in South Gate, California, to points in Arizona, Nevada, Oregon and Utah, located on the rail lines of Southern Pacific Company.

4. Denies each and every allegation of paragraph IV, and particularly denies that section 5(2)(b) of the Interstate Commerce Act (49 U.S.C. sec. 5(2)(b)) is applicable to these proceedings.

(a) For further answer to subparagraph (a) alleges that the Commission, in granting PMT contract carrier operating authority as aforesaid, properly applied the applicable provisions of section 209(b) of the Interstate Commerce Act, as amended August 22, 1957, in Public Law 85-163 (49 U.S.C. sec. 309(b)), which set out the elements of the National Transportation Policy, to be considered by the Commission in a case of this nature, and which now read as follows:

"In determining whether issuance of a permit will be consistent with the public interest and the National Transportation Policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

[fol. 60] The Commission correctly weighed the shipper's requirements against the effect on protesting rail and motor carriers, as required by the above statutory provisions, and found that there was a need for this service and that the authority granted would not in any degree adversely affect the operations of other carriers, rail or motor, which findings are supported by substantial evidence. The Commission's report indicates that the restriction of service by PMT to rail points served by Southern Pacific Company was intended to and would protect the protesting

motor carriers, as well as the protesting railroads, from competition by PMT. Denies that the Commission under the above language of section 209(b) of the Interstate Commerce Act was obligated in these proceedings to consider the availability of existing authorized motor carrier service to transport the traffic involved but alleges that the Commission, nevertheless, did fully consider such factor in its report.

(b) For further answer to subparagraph (b) alleges that the Commission did impose restrictions on the grant to PMT merely because it was a railroad subsidiary in that it restricted it to transportation to rail points. No finding of special circumstances was required in connection with the Commission's refusal to impose the other restrictions usually imposed on a common carrier by motor vehicle affiliated with a railroad, which plaintiffs urged the Commission to impose, because the Commission properly found that the imposition of such restrictions would convert PMT into a common carrier and would thus constitute restrictions which it was not authorized to impose under the applicable statute. Under section 209(b) of the Interstate Commerce Act (49 U.S.C. sec. 309(b)), as amended by Public Law 85-163 on August 22, 1957, the Commission may impose in a contract carrier permit only "such reasonable terms, conditions and limitations, consistent with the character of the holder as a contract carrier, . . . as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, . . ."

(c) For further answer to subparagraph (c) alleges that the Commission fully considered (Decision, sheet 29) and correctly applied the policy of section 210 of the Interstate Commerce Act (49 U.S.C. sec. 310) which prohibits the holding by the same person of a common carrier certificate and a contract carrier permit in the same territory, unless the Commission finds that such dual operations are consistent with the public interest and the National Transportation Policy. In the present case the Commission

properly found that the holding of such dual operations was consistent with the public interest in the National Transportation Policy although the Commission's report states that "our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference." This ultimate conclusion is rationally supported by the Commission's subordinate findings, supported by substantial evidence as indicated below. Thus, such subordinate findings are set out in part in the prior report of the entire Commission dated May 8, 1957, in the Sub. No. 34 proceedings, set forth as Appendix A hereto and made a part hereof, and of which the Commission said in the present case:

"The prior report in the Sub. No. 34 proceeding fully discusses the dual operation question and needs little enlargement or repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted."

[fol. 62] In the prior report of May 8, 1957, the Commission said in this connection:

"In other respects, however, we agree with applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations."

Furthermore, to eliminate any possibility of discrimination or preference from these dual operations the Commission in its report in the instant case imposed an additional restriction, as indicated in the following statement from its report of September 9, 1958:

"Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC 78786 and various subnumbers thereto which are not specifically restricted against such transportation."

(d) For a further answer to subparagraph (d) alleges that the assertion in that subparagraph that the Commission's order "confers an absolute monopoly upon the Railroad and its motor subsidiary between Oakland, South Gate and Raymer, California, and the destination states involved" is inconsistent with the allegations of subparagraph (a) of paragraph IV of the complaint wherein plaintiffs allege "that there is a great amount of existing authorized motor carrier service available to transport the traffic involved."

### Second Defense

As a second defense this defendant alleges:

Plaintiffs American Trucking Associations, Inc., The Contract Carrier Conference of American Trucking Associations, Inc., and National Automobile Transporters Association are not engaged in motor carrier or any transportation in competition with PMT or at all and will not be subjected to any legal injury by this order. As the

Commission's report indicates, the other plaintiffs, which are motor carriers, neither individually nor collectively have operating authority to provide truckaway or drive-away service in initial movements from the three assembly plants here involved to the entire destination areas authorized by the Commission's report, and one of them, Kenosha Auto Transport Corp., does not appear to have any authority to serve these three plants of General Motors. Furthermore, as the report shows, the traffic to the points involved is now being handled exclusively by rail and would continue to be transported by rail or by proprietary trucks of General Motors Corporation or by another independent trucking company, other than plaintiffs, even if the order authorizing PMT to conduct these operations were set aside so that this order does not injure plaintiff truckers competitively and so that the setting aside of this order would not benefit them. Consequently, none of the plaintiffs has any standing to bring this suit.

### Third Defense

As a third defense this defendant alleges:

No interlocutory injunction should be granted because: (a) on the basis of the plaintiffs' complaint and this answer, plaintiffs have totally failed to establish even a prima facie case as to the invalidity of the Commission's [fol. 64] order; (b) the balance of convenience of the parties is clearly in favor of denying such relief, in that granting of an interlocutory injunction as the Commission's report indicates, would deprive PMT of the substantial revenues from the transportation authorized in this order and would deprive General Motors of service by PMT which the Commission has found as needed, whereas denial of an interlocutory injunction would not cause any of this traffic to be diverted to plaintiffs or otherwise benefit them; and (c) plaintiffs are not subjected to irreparable, or any injury by the order, as Judge Keech apparently decided in issuing an order on October 8, 1958, denying plaintiffs a temporary restraining order.



Wherefore, defendant prays that no interlocutory injunction be entered and that the complaint be dismissed, with costs charged to plaintiffs.

Dated this 22nd day of October, 1958.

Respectfully submitted,

Robert L. Pierce, William Meinhold, Edward M. Reidy, Thormund A. Miller, Attorneys for Pacific Motor Trucking Company, Intervenor.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 65]

APPENDIX "A" TO ANSWER  
INTERSTATE COMMERCE COMMISSION

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Decided May 8, 1957

1. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to described points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. Holding by applicant of a permit as authorized herein and those previously issued, and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.

3. Issuance of a permit approved upon compliance by applicant with certain conditions, and application in all other respects denied.

*William Meinhold and Stanfield Johnson* for applicant.

*John G. Lyons and Phil Jacobson* for protestants and interveners in opposition to the application.

#### REPORT OF THE COMMISSION ON ORAL ARGUMENT

##### BY THE COMMISSION :

No exceptions were filed to the order recommended by the joint board, but it was stayed by order of Division 1. The parties have been heard in oral argument with respect to the dual operations issue arising under section 210 of the Interstate Commerce Act. Our conclusions differ slightly from those recommended.

By application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by [fol. 66] motor vehicle, of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet Plants Nos. 1 and 2, in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes. Insured Transporters, Inc., intervened as its interests might appear, and certain other motor common carriers made representations at the oral argument on the dual operations issue.

Applicant is a wholly-owned subsidiary of the Southern Pacific Company. It presently holds various certificates issued by this Commission authorizing extensive operations as a motor common carrier between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes, in the transportation of general commodities, with exceptions; and it also holds permits authorizing operations as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveaway and truckaway service (1) from Oakland to Hawthorne, Carson City, and

Minden, Nev., and points in Nevada which are stations on the rail lines of the Southern Pacific Company, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its contract carrier operations are performed for the Chevrolet Division of General Motors Corporation. On June 29, 1955, it was granted temporary authority to transport new automobiles, new trucks, and new buses, in initial movements, by the truck [fol. 67] away and driveaway methods, from Oakland to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, but as of the date of the hearing herein in January 1956, it had not utilized such authority. Such temporary authority, which is substantially co-extensive with the permanent authority here sought, is now conditioned to expire upon final determination of the instant application.

The board recommended that applicant be granted a permit authorizing operation as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in truckaway service, from Oakland to points in Oregon which are stations on the rail lines of the Southern Pacific Company, over irregular routes, restricted to vehicles bearing the trade name "Chevrolet". The board also found that the holding by applicant of such a permit and its holding of a certificate authorizing common carrier operations in the same territory would be consistent with the public interest and the national transportation policy.

No exception is taken to the board's statement of facts, and we adopt it as our own except to the extent some modification or enlargement thereon appears necessary or desirable for a discussion of the issues presented.

Division 1 stayed the taking effect of the order recommended by the board in order to give consideration to the propriety of the restriction mentioned above, namely that limiting the service to be performed to the transportation of vehicles bearing the name "Chevrolet" and thereafter the proceeding was assigned for oral argument on the dual operations issue.

[fol. 68] General Motors operates two assembly plants in Oakland. One, the so-called Plant No. 1, assembles only Chevrolet automobiles. At Plant No. 2, however, there are assembled Chevrolet trucks and buses and also GMC trucks. Chevrolet trucks coming off the assembly line and destined for movement by applicant are driven to applicant's yard, which is adjacent to Plant No. 1. GMC trucks coming off the assembly line are driven to the GMC yard adjacent to Plant No. 2. The GMC trucks to be delivered by motor vehicle are handled exclusively by intervener Insured Transporters, Inc., and this carrier is apprehensive that if the instant application is granted, without a restriction such as that recommended by the board, it may lose some of its business to applicant. Chevrolet ships its trucks along with shipments of automobiles, and it is necessary that any carrier utilized to transport automobiles be in a position to handle both types of vehicles. Insured is not authorized to transport automobiles and hence its service would be of little use for the combined movement of Chevrolet trucks and automobiles.

In our opinion, commodity descriptions couched in terms of trade names are objectionable under any circumstances. The desired result may be otherwise obtained, however, (1) by restricting the transportation of trucks to those in mixed shipments with automobiles, or (2) by limiting the service to shipments from the site of Plant No. 1. It is possible that occasions might arise when Chevrolet would desire to ship a straight load of trucks, and hence the restriction to the site of Plant No. 1 appears to be preferable.

[fol. 69] The record is silent concerning the proposed movement of buses, and, in fact, shipper's representative indicated an interest in the proposed service only insofar as automobiles and trucks are concerned. Additionally, the service is to be performed only by the truckaway method, and there is no showing that the equipment to be utilized is capable of handling assembled buses. In the circumstances, and except for the provisions of section 210 of the act hereafter discussed, the record establishes a need on the part of the supporting shipper for the transportation of new automobiles and new trucks, in initial movements, from the site of General Motors' Plant No. 1, in Oakland,

to points in Oregon on the lines of the Southern Pacific Company.

There remains the question of the propriety of granting applicant a permit authorizing operations of the scope indicated above while, at the same time, it also holds a certificate authorizing common-carrier operations in the same territory. Further, there is also a question as to whether we should grant such a permit in view of the extensive common carrier rail service now provided in the territory by applicant's parent corporation, the Southern Pacific Company. True, the provisions of section 210 of the act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle, but even without the statutory requirements, we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. [fol. 70] We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed.

Insofar as concerns dual operations by applicant as a common carrier and as a contract carrier by motor vehicle, the contract-carrier operations here considered are not competitive with the common-carrier operations now conducted or authorized. Most of the common-carrier authority held by applicant is restricted against the transportation of automobiles and trucks, either specifically, or in the form of a restriction against the transportation of commodities requiring special equipment. The latter restriction would not preclude the movement of a single car or truck on a unit of conventional equipment, but that type of movement is not practicable for an operation of the nature here considered, and the restriction operates as a bar to the use of the specialized equipment here contemplated to be used. Actually, applicant has never transported an automobile or a truck under its common-carrier authority, and it expresses a willingness to have any appropriate limitation imposed upon such authority to pre-



vent it from so doing. Although the common-carrier and contract-carrier operations are not competitive, the granting of authority which would permit applicant to serve the same shipper, either at the same plant or at any other point, both as a contract carrier of automobiles and trucks and as a common carrier of general freight, nevertheless requires careful scrutiny and special justification. The relationship between applicant and the railroad clearly [fol. 71] opens the door for violation of the principles underlying section 210, even though not specifically covered by the statute. The granting of the instant application would permit the Southern Pacific Company to serve the same shipper, General Motors, both as a contract carrier by motor vehicle and as a common carrier both by rail and motor of general freight.

In defense of its position that such dual operations described above are not inconsistent with the public interest and the national transportation policy, applicant points out that the present situation has prevailed for many years, it having commenced its contract-carrier service for Chevrolet in 1935, in intrastate commerce; that at no time has any person, carrier or otherwise, charged it with any of the practices which section 210 is designed to prohibit; that the situation which would result from a grant of authority to extend its contract-carrier operations into Oregon is in no way different from that prevailing in California and Nevada at the time its previous dual operations were approved; and that the situation, for all practical purposes is no different from that which has prevailed in the movement of California intrastate traffic for over 20 years, with the approval of the regulatory Commission of that State. It further urges that it has expended large sums of money for equipment and other facilities in reliance upon the approval which we have heretofore granted in respect of dual operations and in respect of the grant of temporary authority which we made for contract-carrier operation of the scope here involved as far back as June, 1955. It points [fol. 72] out that the provisions of section 210 are not absolutely prohibitive of dual operations and that the history of the statute indicates an intent that dual operations shall be approved in meritorious cases.

Applicant's plea that it has relied upon our past approval of specific dual operations, we think, is without merit. Each successive grant of common or contract carrier authority which would result in dual operations must, under the statute, be accompanied by a finding that such resultant dual operations will be consistent with the public interest and the national transportation policy. Each such finding must be based upon the circumstances existing at the time the particular grant is made and each case must be decided on its own merits. Certainly, the express provisions of the act place applicant on notice that it should not rely upon a grant of temporary authority to foreshadow a subsequent grant of corresponding permanent authority.

In other respects however, we agree with applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service [fol. 73] which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations.

We find that operation by applicant in interstate or foreign commerce, as a contract carrier by motor vehicle of automobiles and trucks, in initial movements, in truck-away service, from the site of General Motors Corporation's Plant No. 1, at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a permit authorizing such service should be

granted; and that in all other respects the application should be denied.

We further find that the holding by applicant of the permit granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common-carrier operations in the same territory, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215 and 218 of the act, with our rules and regulations thereunder, and with the requirements established in [fol. 74] *Contracts of Contract Carriers* 1 M.C.C. 628, an appropriate permit will be issued. An order will be entered denying the application except to the extent granted.

WALRATH, Commissioner, dissenting:

I am not in agreement with the conclusions of the report in respect of dual operations. Approval of the holding of a certificate and a permit by applicant may be made only upon a showing of good cause under the language of section 210 of the Act. In my opinion, the record does not present any basis for finding that the dual operations, which would result from a grant of contract carrier authority, will be consistent with the public interest and with the national transportation policy. Rather, it forces me to a contrary conclusion. The prohibition against dualism in carrier operations was clearly designed to prevent the possibility of undue preference and unjust discrimination. While the statute speaks only of motor carrier operations, here we are faced with approving the issuance of a contract carrier permit to a certificated common carrier which is completely controlled by a rail carrier. Notwithstanding past performances in a dual capacity, without complaint or charge of discriminatory practices, the authorization of additional contract carriage by applicant will compound a situation already fraught with the peril which the prohibition was intended to prevent. Surely, the ability to serve a shipper in connection with its unquestionably extensive volume of inbound general freight traffic as a rail carrier and as a motor common carrier, as well as to

provide service on the outbound traffic of automobiles and trucks both as a rail carrier and a motor contract carrier, places such a carrier in a peculiarly advantageous position to favor the shipper, even where the motor contract carrier [fol. 75] service is limited to points which are stations on the principal's rail lines. Thus, the possibility of preferential and discriminatory practices far outweighs the recognition in this case of the preference of a single shipper and the other reasons mentioned in the report as justifying a finding that good cause exists for approving applicant's operating as both a common and contract carrier within the same territory.

McPHERSON, *Commissioner*, dissenting:

I do not agree with the statement in this report that applicant is unable to transport automobiles under its general commodity operating authority. See *L. C. Jones Trucking Co. Extension—The Dakotas*, 62 M.C.C. 539. Applicant, under the grant herein, will, therefore, be able to transport automobiles as both a common carrier and a contract carrier. The Southern Pacific Company, of which applicant is a wholly-owned subsidiary, may transport automobiles in rail service. In view of these facts, I believe that all will agree that a very serious question is presented with respect to the extent to which operations contemplated by Section 210 of the Act will be authorized.

I agree that in general each situation in which dual operations are involved must be considered on its own merits, and I am considerably impressed by the fact that no instances of discrimination or other improper practices with respect to the parties or operations here involved have been brought to our attention, but I do not believe that approval of the dual operations which would result here can be based on the absence of criticism with respect to [fol. 76] past operations. Although applicant may be able to serve only one automobile and truck manufacturer as a contract carrier, it is able to serve several others as a common carrier, in the same general territory and on the same as well as different commodities. The opportunities for indulging in unfair or discriminatory practices are

very great. The mere possibility is usually sufficient to be a bar to approval of dual operations. See *C. A. Conklin Truck Line, Inc., Dual Operations*, 44 M.C.C. 463. In the circumstances, I am unable to find the good cause which the Act requires before we may approve dual operation and, therefore, I feel compelled to deny the application.

Commissioners Freas, Winchell, and Murphy did not participate in the disposition of this proceeding.

[fol. 77]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of May, A. D. 1957.

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Investigation of the matters and things involved in this proceeding having been made, and the Commission on the date hereof, having made and filed a report on oral argument herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

*It is ordered*, That said application, except to the extent granted in said report, be, and it is hereby denied.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)



[fol. 78]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF GENERAL MOTORS CORPORATION, INTERVENING  
DEFENDANT—Filed October 27, 1958

General Motors Corporation, intervening defendant in the above-entitled action by order of the court October 8, 1958, for answer to the complaint therein filed states as follows:

First Defense

That the complaint fails to state a claim against the defendants upon which relief can be granted. (5 U.S.C. Sec. 1009)

Second Defense

1. Admits, for the purpose of this action, the allegation [fol. 79] in paragraph I of the complaint, to-wit: jurisdiction; and in further answer to said allegation respectfully says to the court that all the matters and things of which complaint is made, as more fully set forth in paragraph IV of the complaint, are matters and things within the discretion of the Interstate Commerce Commission and this intervening defendant denies that there has been any abuse thereof, or that the Commission has otherwise acted unlawfully, in granting to Pacific Motor Trucking Company, another intervening defendant, a permit authorizing certain motor carrier operations. (49 U.S.C. Sec. 309(b))

2. Admits the identity of party plaintiffs set out in paragraph II of the complaint, but denies that either of said plaintiffs has, or will, suffer a legal wrong, or be adversely affected or aggrieved by the action of the Interstate Commerce Commission. (5 U.S.C. Sec. 1009)

3. Admits the description of proceedings before the Interstate Commerce Commission, set out in paragraph III of the complaint, but respectfully refers the court to Appendix A to the complaint for the exact scope of authority granted by the Interstate Commerce Commission to Pacific Motor Trucking Company, another intervening defendant.

4. Denies the allegations of paragraph IV that the Interstate Commerce Commission exceeded its powers and authority delegated under law in issuing the report and order more fully identified in the next preceding paragraph, [fol. 80] and in further answer respectfully says to the court that the particulars cited by plaintiffs as error do not constitute grounds for review for the following reasons:

This intervening defendant—

(a) Denies the allegation in subparagraph (a) of paragraph IV of the complaint that "there is a great amount of existing authorized motor carrier service available" and that the Commission's order fails to protect said motor carriers is entitled to no standing under the statute. The availability of service by common carriers is not one of the criteria to be considered in proceedings of this kind. (49 U.S.C. Sec. 309(b));

(b) Denies the allegation in subparagraph (b) of paragraph IV of the complaint that the operations authorized by the Commission are "completely divorced from those of the railroad" (Pacific Motor Trucking Company is a subsidiary of the Southern Pacific Company) and "without evidence of record" to support the grant of such authority. Said allegation is not in accord with the findings of the Commission. (See Appendix A to the complaint at Sheets 25 and 31);

[fol. 81] (c) Denies the allegation in subparagraph (c) of paragraph IV of the complaint that the Commission failed to give effect to those provisions of the statute (49 U.S.C. Sec. 310) designed to preclude dual operations by a common carrier by motor vehicle and a contract carrier by motor vehicle under common

control. The Commission gave specific attention to this phase of the proceedings, had oral argument thereon in which plaintiffs participated, and discussed the question specially in its report. (See Appendix A to the complaint p. 29) Whether such dual operations are consistent with the public interest is a matter delegated to the administrative discretion of the Interstate Commerce Commission by section 310.

(d) Denies the allegation in subparagraph (d) of paragraph IV of the complaint that the Commission's order "promotes monopoly in transportation". Said allegation is inconsistent with the allegation of subparagraph (a) where plaintiffs apprise the court that "there is a great amount of existing authorized motor carrier service available";

(e) Denies the summary allegation of subparagraph [fol. 82] (e) of paragraph IV of the complaint that for the reasons set forth in subparagraphs (a) to (d) the Commission has erred as a matter of law. The reasons set forth in plaintiffs' statement of particulars are answered hereinabove.

### Third Defense

1. In further answer, this intervening defendant respectfully states to the court that the matters and things complained of are fully reported by the Commission as shown in Appendix A to the complaint, and that said matters and things are the subject of the Commission's administrative discretion as delegated by the Congress (49 U.S.C. Secs. 5(2)(b), 309(b), 310); that there was no abuse of discretion by the Commission, nor did it act unreasonably, arbitrarily or capriciously, in granting certain operating authority to Pacific Motor Trucking Company; and, finally, that the complaint fails to state that the order of the Commission will visit upon plaintiffs a legal wrong, or that it will adversely affect or aggrieve them, singly or collectively, such as would entitle them to judicial review. (5 U.S.C. Sec. 1009).

2. Each and every allegation in the complaint not herein expressly admitted by this intervening defendant is denied.

Wherefore, this intervening defendant prays to the court [fol. 83] that the prayer for relief sought be denied and that the complaint be dismissed with costs to the plaintiffs.

Dated this 24th day of October, 1958.

Respectfully submitted,

General Motors Corporation, By Its Attorneys:

Henry M. Hogan and Walter R. Frizzell, 3044 West Grand Boulevard, Detroit 2, Michigan;

Beverly S. Simms, 612 Barr Building, 910 Seventeenth Street, N.W., Washington 6, D.C.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 85]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[File endorsement omitted]

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—  
Filed December 1, 1958

The United States of America, defendant in the above-entitled action, in answer to the complaint, says:

# I

This is a complaint to set aside an order of the Interstate Commerce Commission. The Interstate Commerce Commission has adequate authority to defend and protect its orders challenged herein.

The Commission will avail itself of the statutory authorization to appear and interpose all possible defenses to plaintiffs' charges and claims, and intervening defendants may present their position through their own counsel.

Under these circumstances, and in view of these facts, the United States does not participate in the defense of the Commission's order, but does not oppose its defense.

James E. Kilday, John C. Danielson, Attorneys, Department of Justice, Washington 25, D. C.;

Victor R. Hansen, Assistant Attorney General;  
Oliver Gasch, United States Attorney, District of Columbia, United States Court House, Washington 1, D. C.;

Attorneys for the United States of America.

[fol. 86] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 87] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF DEFENDANT INTERSTATE COMMERCE COMMISSION  
—Filed December 3, 1958

The Interstate Commerce Commission (hereinafter called the Commission), one of the defendants in the above entitled action, answers the complaint as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph II, except that it denies that B & H Truckaway, one of the plaintiffs, is a common carrier by motor vehicle, and avers that it is a contract carrier by motor vehicle.
3. Admits the allegations of Paragraph III, except that it denies the allegations in the first subparagraph of Paragraph III as to the destinations sought to be served from the respective origins sought to be served in the application filed by Pacific Motor Trucking Company in Docket No. MC78787 (Sub-No. 37), and for the proper description of such origins and destinations the attention of the Court is respectfully directed to the application in



question, and to Sheet 4 of the Commission's decision of September 9, 1958, attached as Appendix A to the complaint; and denies the characterization of the Commission's report of September 9, 1958, as contained in the second sentence of the third subparagraph of Paragraph III, and for the proper interpretation of that report the Court is respectfully referred to the report itself. For further answer to Paragraph III, the Commission avers that under date of May 8, 1957, it issued a prior report on oral argument in Docket No. MC-78787 (Sub-No. 34), entitled *Pacific Motor Trucking Company Extension—Oregon*, reported in 71 M.C.C. 561, which report of May 8, 1957, was incorporated as a part of the report and order of the Commission of September 9, 1958, under attack by the plaintiffs in this proceeding, but which report of May 8, 1957, was not referred to by the plaintiffs in their complaint.

4. Denies the allegations in Paragraph IV.

5. For further answer to the complaint, the Commission alleges that all of the parties to the proceedings before the Commission were given a full and complete hearing; that the findings and conclusions in the reports and orders attacked in the complaint, as well as the prior report in Docket No. MC-78787 (Sub-No. 34) were and are fully [fol. 89] supported and justified by the evidence submitted in said proceedings; that in making said reports the Commission carefully considered and applied the criteria fixed by law, considered and weighed carefully the National Transportation Policy, considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition required by law to be considered, and weighed as well each fact, circumstance and condition called to its attention by the parties to said proceedings by their respective counsel or otherwise; that said reports and orders were not made or entered unreasonably, arbitrarily, capriciously, or in abuse of its discretion; that in making said reports and orders, the Commission did not exceed the authority conferred upon it by law; and, except as expressly admitted in this answer, the

Commission denies each and every allegation contained in the complaint in conflict with the allegations of this paragraph.

Wherefore, having fully answered, the Interstate Commerce Commission, one of the defendants, prays that the relief sought in the complaint be dismissed.

**James Y. Piper, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.;**

**Robert W. Ginnane, General Counsel;**

**Attorneys for the Interstate Commerce Commission.**

[fol. 90] **CERTIFICATE OF SERVICE** (omitted in printing).

[fol. 91] [File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,**

**v.**

**UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,**

**and**

**PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.**

# OPINION—January 20, 1959

Before Bastian, Circuit Judge, and Keech and Curran,  
District Judges, sitting as a statutory three-judge court.

Keech, District Judge:

This is an action by certain motor carrier trade associations and motor carriers to set aside an order of the Interstate Commerce Commission entered September 9, 1958, which directed the issuance, under certain conditions, of motor contract carrier permits under §209(b) of the Interstate Commerce Act [49 U.S.C. §309(b)] authorizing Pacific Motor Trucking Company of San Francisco, California, to transport automobiles and trucks, except trailers, [fol. 92] in initial movements in truckaway and/or driveaway service, from plants of the General Motors Corporation at Oakland, Raymer, and South Gate, California, to certain named off-rail points in Nevada, and to all points in Oregon, Nevada, Utah, Arizona, and New Mexico which are stations on the rail lines of the Southern Pacific Company.

Pacific Motor Trucking Company (hereinafter referred to as PMT) is a wholly owned motor carrier subsidiary of Southern Pacific Company (hereinafter referred to as SP), which operates an extensive railroad system in Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

PMT since December 10, 1935, has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and driveaway service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub 23, issued June 20, 1944); (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub 27, issued April 21, 1950); (3) from Raymer, California, to points in the Los Angeles

Harbor Commercial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950); and (4) from Oakland, California, to Carson City and Minden, Nevada, both being non-rail points (MC 78787, Sub 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications in [fol. 93] volved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California.

The order complained of grew out of extensive proceedings before the Commission following the filing of the four applications by PMT, seeking to extend its service as a contract carrier for GM in the Pacific Coast area for the transportation of a single commodity, new automobiles and trucks. In general, by the Sub 34 application, PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, California, to all Oregon points which are stations on SP; by the Sub 35 application, the right to serve three additional non-rail points in Nevada from Oakland, California; by the Sub 36 application, to serve all Arizona points which are stations on SP; and by the Sub 37 application, authority to round out its service areas from the Oakland and Raymer plants to include all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico, whether or not they are stations on SP, and to begin new service from the Buick-Oldsmobile-Pontiac plant at South Gate, California, to a seven-state area, namely, Washington, Oregon, Idaho, Nevada, Utah, Arizona, and Montana. The four sub-proceedings were finally consolidated in Sub 37, from which the order complained of emanated. All of the plaintiffs in this action, who had been protestants in one or more of the other sub-numbers, participated in the consolidated proceeding before the Commission.

By the order here under attack, the Commission granted the authority sought in the Sub 35 proceeding, service from the Oakland plant to three additional non-rail points in [fol. 94] Nevada, which had been opposed by only one protestant, not a party to this action; but as to the Sub

34, 36, and 37 applications, the Commission denied entirely the authority requested to serve destinations in states not served by SP (Washington, Idaho, and Montana) and limited the authority granted to destinations in the other states (Arizona, Nevada, Oregon, Utah, and New Mexico) to points located on the rail lines of SP. Thus, the Commission's order granted only a limited portion of the authority sought in the four applications, and issuance of the new permits thereunder was conditioned on curtailment of existing common carrier authority to transport automobiles and trucks.

This action to set aside the Commission's order and for a temporary restraining order and for interlocutory and permanent injunction against issuance of the permits authorized thereby, was brought under the provisions of §205 (g) of the Interstate Commerce Act [49 U.S.C. §305(g)], §10 of the Administrative Procedure Act [5 U.S.C. §1009], and §§ 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code [28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325]. The plaintiffs' motion for a temporary restraining order was denied after hearing. On November 24, 1958, permits for the operations authorized by the order were issued by the Commission. The prayer for injunction was thereafter abandoned, and the cause is now before this statutory three-judge court for a determination on the merits.

The plaintiffs American Trucking Associations, Inc., The Contract Carrier Conference of American Trucking Associations, Inc., and National Automobile Transporters Association are motor carrier trade associations. The plaintiffs Convoy Company, Robertson Truck-A-Ways, Inc., Western Auto Transports, Inc., and Kenosha Auto Trans. [fol. 95] port Corp., are motor common carriers authorized to operate in one or more of the states affected by the extensions of Pacific Motor Trucking Company's contract operations authorized by the order. Robertson holds common carrier authority to transport automobiles and trucks, in initial movements, in truckaway service from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon. The plaintiffs Hadley Auto Transport and B & H Truckaway are motor contract carriers. Hadley is authorized to transport in initial



movements, in truckaway service, automobiles from points in Los Angeles County, California, which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah. B & H is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, California, an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements from Vernon to points in Utah, Idaho, Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone.

The United States and the Interstate Commerce Commission were named defendants. The United States was represented at the hearing on the motion for a temporary restraining order, and thereafter an answer was filed on its behalf stating:

"...the United States does not participate in the defense of the Commission's order but does not oppose its defense."

[fol. 96] There has been no further participation by the United States in the proceedings.

Pacific Motor Trucking Company and General Motors Corporation sought leave to intervene on behalf of the defendants. Their requests were granted, PMT, the applicant, and GM, the sole shipper involved, being the parties who would be most affected if the Commission's order should be set aside.

The question presented by this action is, to summarize, whether the Commission erred in authorizing extension of PMT's existing contract carrier authority to serve a single shipper, GM, and to transport a single commodity, new automobiles and trucks, from three GM plants in California to points within five western states which are stations on the rail lines of PMT's parent railroad, SP.

<sup>1</sup> This is of particular significance in view of the fact that the United States on occasion has seen fit to oppose actively orders of the Interstate Commerce Commission.

The plaintiffs challenge the order, contending the Commission erred in the following respects:

- "1. It ignored the provisions of the National Transportation Policy applicable in proceedings of the type under consideration;
- "2. It ignored the mandate of the provist of §5(2)(b) [of the Interstate Commerce Act] which it must observe in cases of this kind except where special circumstances, not here present, justify an exception to the Congressional policy against performance of unrestricted truck service by railroads or their affiliates;
- "3. It failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review;
- "4. It failed to conform to the Congressional policy manifested by §210 of the Interstate Commerce Act against dual operations."

Counsel for both sides agree as to the scope of judicial review permitted in such a case as this, namely, that an [fol. 97] order of an independent body such as the Interstate Commerce Commission is not to be disturbed if the order is within the scope of the statute which the Commission is authorized to administer and enforce, and is based upon adequate findings, which are supported by substantial evidence in the record. Counsel also recognize that this is so even though the court should disagree with the Commission's conclusion, since the Act is not rigid and confides broad discretion in the Commission. It is, therefore, the function and duty of this court to determine whether the order here under consideration comes within the prescribed legal limits.

Plaintiffs differ with the defendant Commission and the intervenors, PMT and GM, as to what are the statutory limits of the Commission's authority applicable to granting of contract carrier authority to a motor carrier which is the wholly owned subsidiary of a railway.

The basic statute which governs the issuance of motor contract carrier permits is §209(b) of the Interstate Commerce Act [49 U.S.C. §309(b)], as amended by the Act of August 22, 1957, Pub. 85-163, 71 Stat. 411.<sup>2</sup> Section 209(b)

<sup>2</sup> "209(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6); *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of

in terms provides that issuance of such permits shall be [fol. 98] subject to the limitation on issuance of dual contract and common carrier authority contained in §210 of the Act [49 U.S.C. §310]. Further, the Act must be read as a whole and the various sections interpreted and applied in the light of the national transportation policy<sup>3</sup> and the policy underlying §5(2)(b) [49 U.S.C. §5(2)(b)].<sup>4</sup> It is [fol. 99] not questioned that PMT's past operations for GM, as well as the extended operations authorized by the order, are those of a contract carrier by motor vehicle, as defined by §203(a)(15), as amended August 22, 1957 [49 U.S.C. §303(a)(15)].<sup>5</sup> Nor is there any question that the

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such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203 (a)(15), as in force on and after the effective date of this proviso."

\* <sup>3</sup> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." Act of Sept. 18, 1940, c. 722, Title I, §1, 54 Stat. 899.

<sup>4</sup> *American Trucking Associations v. United States*, 355 U.S. 141, 151-2 (1957).

<sup>5</sup> "(15) The term 'contract carrier by motor vehicle' means any person, which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) of this section and the exception therein), under continuing contracts

Commission had authority under §209(b) to issue permits for the extended contract carrier operations, unless such permits to PMT, as a subsidiary of SP, were in violation of some other statutory provision.

The plaintiffs admit that there is no express provision prohibiting this grant of authority to PMT, but contend that the grant to a wholly owned motor carrier subsidiary of a railroad of "unrestricted" authority to engage in common carrier operations in competition with independent motor carriers, is contrary to the public interest and national transportation policy as heretofore applied by the Commission and interpreted by decisions of the courts, including the Supreme Court.

The first question which must be resolved is therefore: How is §209(b) to be interpreted in the public interest and in the light of the national transportation policy? Section 209(b) in terms provides:

"... In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

The plaintiffs in their brief contended that this amendment of §209(b) "has no bearing on the issues" in the [fol. 100] instant case. During the oral argument counsel for plaintiffs admitted that this amendment of the statute was in effect and binding on the Commission at the time it issued the order complained of, but argued that it had no application to the factual situation involved in the

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with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."



order here under consideration. Plaintiffs argued that the legislative history of this provision shows that the reason for its adoption was to nullify the decision of the Supreme Court in *United States v. Contract Steel Carriers, Inc.*, 350 U.S. 409, 412, approving the right of contract carriers to seek new business to an extent that the carrier might become a common carrier in fact, remaining a contract carrier in name only. The effect of the court decision was remedied by a second sentence inserted in §209(b) by the 1957 amendment; and whatever may have been the original reason for instituting the legislation which culminated in the 1957 amendment, §209(b), as it read at the time the Commission issued this order, clearly directed consideration by the Commission of certain specific criteria in applying public interest and the national transportation policy to authorization of contract carrier permits.

The order here challenged shows on its fact that the Commission did consider those criteria, making findings with respect to each of them.

As to the number of shippers to be served by the applicant and the nature of the service proposed, the Commission found the evidence established that PMT's sole purpose was to afford GM extended driveaway and truck-away transportation of new cars and trucks from GM's plants at Oakland, Raymer, and South Gate, California, and that PMT's equipment was to be assigned to the exclusive use of that shipper.

As to the effect of granting the permit upon the services of protesting carriers, both ~~rail and motor~~, the Commission made detailed findings as to the amount of GM traffic theretofore handled, or not handled, by the protesting carriers, both rail and motor. Careful consideration was given to the probable loss of GM traffic by rail carriers [fol. 101] in joint-line service with SP, if authority were granted to PMT to serve points beyond SP's line, and the probable loss to a motor carrier presently serving GM dealers in Washington and Alaska, if PMT should be authorized to operate within the State of Washington. The Commission also weighed the effect on other independent motor carriers, both common and contract, authorized to serve any of the areas affected by the proposed extension

of authority. It found that Hadley, one of the two protesting contract carriers, was dedicated to serving Ford, GM's largest competitor, that B & H, the other protesting contract carrier, possessed limited authority for operations from Vernon, California, and had in the past served Studebaker-Packard, and that Robertson, a common carrier protestant, transported vehicles principally for Chrysler.

As to the effect denial of the permit would have upon the applicant and the shipper and the changing character of the shipper's requirements, the Commission found that the shipper, GM, had established its need for extension of the personalized type of contract service which PMT had been rendering it, and rendering well, from other points for many years; that in view of the limited storage facilities maintained by GM at its plants, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers; that use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant, which are geared to use of PMT's services from its nearby yard. The proposed extension of service was supported by GM in order to obtain faster transportation on shipments requiring expedited handling, direct deliveries to dealers at off-rail points, more flexible and expeditious handling of consolidated shipments, and to meet the competition of other automobile manufacturers, notably [fol. 102] Ford and Chrysler, which have motor services available. The Commission further found that, should the requested authority be denied, GM had indicated it would not use the services of the protesting motor carriers, but either would support an application for similar authority by an independent motor contract carrier presently serving a GM branch plant at Arlington, Texas, or would institute proprietary operations. The order further shows that denial of the permit would cause substantial damage to the applicant, PMT, which has dedicated its contract carrier service to GM operations for many years, acquiring special equipment to meet GM's needs, and that PMT's contract carrier operations for GM during the years 1953

through the first eleven months of 1936 averaged 86.35% of PMT's total contract carrier operations. Thus, although the Commission found an "absence of unusual conditions" which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM.

All of the Commission's findings and conclusions are supported by substantial evidence in the record before it.

The plaintiffs contend that any grant of contract carrier authority to a motor carrier subsidiary of a railroad must be limited to operations which are "auxiliary or supplemental" to the rail operations, the test applied by the Commission in permitting unification, merger, or acquisition of control of a motor carrier by a railroad under §5(2)(b); that such authority must be limited further by the five restrictions generally applied by the Commission, in the absence of special circumstances; in granting common carrier authority under §207 to a motor carrier subsidiary of a railroad; and that such authority is subject to the prohibition against dual common and contract carrier authority under §210.

[fol. 103] The Commission denies that the limitations which it has administratively adopted in applying §207 and §5(2)(b) are applicable to the issuance of contract carrier permits under §209, pointing out that it has already been determined in the *American Trucking Association* case, *supra*, 355 U.S. at 149-150, that §5(2)(b) is not a rigid limitation upon issuance of common carrier permits under §207, although the Act is to be read as a whole and the Commission properly considered the underlying policy of §5(2)(b) as a "guiding light" in the exercise of its discretion under §207. The Commission points out further that to apply to a §209(b) contract carrier permit the five restrictions generally placed upon a §207 common carrier certificate in the case of a motor carrier subsidiary of a railroad, would convert the contract carrier into a common carrier, and that the §210 ban on dual operations applies to common and contract carriage by the same motor carrier or affiliated motor carriers, and does not deal with

dual operations by a railway and its motor carrier subsidiary.

The Commission concedes that the rationale which requires a reading of the Act as a whole and consideration of the policy underlying §5(2)(b) as a guiding light in the issuance of §207 common carrier certificates is equally applicable to the granting of §209(b) permits for contract carrier operations. It contends that it did apply, insofar as practicable in dealing with an application for contract carrier authority, the policies underlying §5(2)(b), §207, and §210, as well as the specific criteria laid down by the Congress in its 1957 amendment of §209(b) for determining whether issuance of a contract carrier permit is consistent with the public interest and the national transportation policy.

[fol. 104] That the Commission did apply the Act as a whole, giving effect to the policies underlying §§ 5(2)(b), 207, and 210, as well as carefully following the guide laid down by the Congress in §209(b) for determining public interest and compliance with the national transportation policy, is borne out not only by the findings of fact recited in the Commission's order, but by its conclusions as to the scope of extended operations which would be in the public interest, and by the curtailed authority which the [fol. 105] Commission granted.<sup>6</sup> It will be observed that

<sup>6</sup> "We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand, use by General Motors of applicant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. Insofar as Southern Pacific points are concerned, the authority

the requested authority was denied where it would encroach upon existing service by other carriers, and granted where the evidence of record showed that the proposed extension would have little or no effect upon present and future operations of the protestants.

True, the authority granted PMT by the Commission's order was not subject to all five of the restrictions which the Commission has generally, in the absence of special circumstances, seen fit to impose on *common* carrier certificates to motor carriers which are railway affiliates. The extended operations authorized, however—far from being "unrestricted" operations by PMT in the contract carrier field, as the plaintiffs have consistently referred to them—were restricted in many respects. The authority granted was limited to points already served by SP (so as not to affect adversely other railroads carrying GM traffic beyond SP to other rail points), and limited to points on the rail line of SP (so as not to cut in on territory which potentially might be served by independent motor carrier protestants), subject to the condition that "the permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks" in its outstanding common carrier certificates (in the interest of avoiding the possibility of dual motor carrier operations), and the further condition "that there may from time to time in the future be attached to the permits granted such reasonable terms, conditions and limitations as the public interest and national transportation policy may require."

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sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. . . . it is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers." (I.C.C. Order, Sheets 23-25.)



The court finds that the Commission's order violates no statutory prohibition, either in letter or in spirit, and that the authority granted thereby to PMT is in the public interest and in keeping with the national transportation policy, affording the shipper adequate, economical, and efficient service in a specialized field, and at the same time effecting no encroachment on the operations of other carriers or transportation media. Thus, the court finds without merit plaintiffs' allegations of error numbered 1, 2, and 4.

As to the plaintiffs' third allegation of error, that the Commission failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review, the plaintiffs have pointed to no case determinative of the particular question here involved. Most of the cases cited deal with orders under §5(2)(b) or §207 and administrative practice in interpreting and applying those sections. At the argument, plaintiffs relied principally on the Supreme Court's decisions in *United States v. Rock Island Motor Transit Company*, 340 U.S. 419 (1951), and *American Trucking Associations, Inc. v. United States*, 355 U.S. 141 (1957), affirming 144 F. Supp. 365. In both cases the Supreme Court upheld the Commission's administrative interpretation and application of §207 in the light of the policies underlying the Interstate Commerce Act as a whole and the national transportation policy. In the *Rock Island* case, the Court approved the Commission's imposition of five restrictions administratively adopted to insure that common carrier operations by a railway affiliate under a §207 certificate would be "auxiliary and supplemental" to the rail operations in the absence of special circumstances justifying broader authority in the public interest, holding that the modification was authorized by the Commission's reservation, in the original §207 certificate, of power to impose such further restrictions as subsequently might appear [fol. 107] necessary. In the *American Trucking Associations* case the Court merely held that the Commission, in granting a §207 common carrier certificate, had correctly given consideration to the policy underlying §5(2)(b), although the latter section did not constitute a rigid

limitation on §207 certificates. The court finds the Commission's order in the instant case in harmony with the rulings in those cases.

For the foregoing reasons, the court concludes that the Commission in authorizing the extended operations by PMT acted within the limits of its statutory authority and did not exercise its discretion arbitrarily or capriciously; hence, the Commission's order must be upheld on the merits.

The intervenors have raised a further question, namely, the standing of the plaintiffs to bring this action. The intervenors contend that the complaint shows upon its face that none of the association plaintiffs is a "party in interest" authorized by §205(g) of the Interstate Commerce Act [49 U.S.C. §305(g)] to seek judicial review, or the equivalent "person suffering legal wrong because of any agency action" within §10 of the Administrative Procedure Act [5 U.S.C. §1009] and, further, that the complaint fails to include any allegation and there is an absence of proof that the motor carrier plaintiffs have suffered or are threatened with damage or financial injury as the result of the Commission's order, so as to make them parties in interest entitled to bring suit. The intervenors urge that neither mere concern for obedience to law nor the mere possibility of stronger competition by virtue of the grant of new operating authority is sufficient to give the plaintiffs standing to bring this action to set aside the Commission's order, and that to constitute a "party in interest" under §205(g) a plaintiff must show that some definite legal right possessed [fol. 108] by him has been directly damaged or seriously threatened by the order. *Atchison, Topeka, and Santa Fe Railway Co. v. United States*, 130 F. Supp. 76, affirmed *per curiam* 350 U.S. 892 (1955). They point out further that the fact that the plaintiffs were permitted to intervene before the Commission does not alone furnish a basis for plaintiffs' required "interest". *Pittsburgh & W. Va. Ry. Co. v. United States*, 281 U.S. 479 (1930).

The defendant Interstate Commerce Commission did not raise the issue of standing, and the question was argued by the intervenors after the court had heard the case on the merits.

A majority of the court find that the association plaintiffs obviously are not persons possessed of some legal right directly and adversely affected by the administrative action, entitling them to bring an action to set aside the Commission's order. The majority further find that, not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of the extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to institute this action. Had the complaint been filed by some qualified "party in interest," all of the plaintiffs would have had the right to intervene under the provisions of 28 U.S.C. §2323; but the right to intervene presupposes the existence of an action brought by a proper plaintiff. Since none of the plaintiffs has [fol. 109] alleged or shown standing to bring the action under the statutes providing for judicial review of the Commission's orders, it is the view of Judges Keech and Curran that the complaint must be dismissed on the further ground that plaintiffs lack standing to sue.

Judge Bastian concurs in so much of this opinion as deals with dismissal of the complaint on the merits.

Counsel will present an appropriate order dismissing the complaint (1) on the merits and (2) for lack of standing to sue.

Walter M. Bastian, Circuit Judge.

Richmond B. Keech, District Judge.

Edward M. Curran, District Judge.

January 20, 1959.

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<sup>1</sup> 28 U.S.C. §2323, third paragraph:

"Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections [section 2321 of Title 28 and sections 20, 23, and 43 of Title 49] may intervene in said action at any time after commencement thereof."

[fol. 110]

[File endorsement omitted].

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

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AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.

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JUDGMENT—January 30, 1959

The above-entitled cause came on for hearing before this statutory three-judge District Court on December 10, 1958, and the court having considered the pleadings, briefs, and oral argument on behalf of the parties, and having filed on January 20, 1959, its opinion on the issues presented,

*It is hereby ordered, adjudged and decreed, that the complaint of the plaintiffs be, and it is hereby, dismissed (1) on the merits, and (2) for lack of standing of the plaintiffs, or any of them, to bring this action; and the clerk is hereby directed to enter judgment for the defendants and inter-*

[fol. 111] vening defendants, this 30th day of January, 1959.

Walter M. Bastian, Circuit Judge.

Richmond B. Keech, District Judge.

Edward M. Curran, District Judge.

Approved as to form:

Peter T. Beardsley, Larry A. Eskilsen, Attorneys for plaintiffs.

[fol. 112] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 27, 1959

I

Notice is hereby given that American Trucking Associations, Inc., The Contract Carrier Conference of American



Trucking Associations, Inc., National Automobile Transporters Association, Convoy Co., Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final judgment dismissing the complaint entered in this action on January 30, 1959.

This appeal is taken pursuant to 28 U. S. C. A. §1253.

[fol. 113]

## II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Complaint, filed October 7, 1958, including Appendix A, the report and order of the Commission dated September 9, 1958;

(b) Answer of United States, dated December 1, 1958;

(c) Answer of Interstate Commerce Commission, dated December 2, 1958;

(d) Motion for Leave to Intervene and Order Permitting Intervention of Pacific Motor Trucking Co., dated October 8, 1958;

(e) Motion for Leave to Intervene and Order Permitting Intervention of General Motors Corporation, dated October 8, 1958;

(f) Answer of Pacific Motor Trucking Co., dated October 22, 1958, including Appendix A, the report and order of the Commission dated May 8, 1957;

(g) Answer of General Motors Corporation, dated October 24, 1958;

(h) Opinion, dated January 20, 1959;

(i) Judgment, entered January 30, 1959;

(j) Transcript of testimony, and exhibits, before the Interstate Commerce Commission in Docket No. MC-78787

(Sub-Nos. 34, 35, 36 and 37) (Exhibits 1, 2, 3a, 3b and 4 in the District Court);

(k) This notice of appeal.

### III

The questions presented by this appeal are:

1. Whether the Interstate Commerce Commission, in the absence of "special circumstances" such as those disclosed in *American Trucking Associations, Inc. et al. v. U. S. et al.*, 355 U. S. 141, may authorize a wholly-owned railroad subsidiary [fol. 114] to conduct completely unrestricted motor contract carrier operations to all points on its parent railroad's lines?

2. Whether the district court correctly found the existence of "special circumstances" justifying the performance of unrestricted motor service by the rail subsidiary, such findings being directly contrary to those of the Commission itself?

3. Whether the Interstate Commerce Commission, without satisfying the requirements of, or observing the policy underlying, §210 of the Interstate Commerce Act, may validly issue a contract carrier permit to a railroad's motor carrier subsidiary under the following circumstances:

a. Where the subsidiary also holds a common carrier certificate authorizing the transportation of closely-related commodities for the same shipper and receivers and within the same territory?

b. Where the parent company engages in transportation of the same commodities as a rail common carrier, for the same shipper and receivers, as well as competing automobile manufacturers and their dealers, within the same territory?

4. Whether the 1957 amendments to the provisions of the Interstate Commerce Act, Part II, dealing with motor contract carriers, were intended to alter the Congressional policy against rail entry into the motor carrier field?

5. Whether independent motor carriers, found by the Commission to be "authorized to conduct the proposed operations" and motor-carrier associations, all of whom were protestants before the Interstate Commerce Commission, have standing to bring suit to set aside its report and order authorizing unrestricted motor service by a rail subsidiary?

Respectfully submitted,

American Trucking Associations, Inc. and its Contract Carrier Conference:

Peter T. Beardsley, 1424 Sixteenth Street, N. W., Washington 6, D. C.;

Charles W. Singer, 1825 Jefferson Place, N. W., Washington, D. C., Attorneys.

National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., Kenosha Auto Transport Corp.:

Walter N. Bieneman, 2150 Guardian Building, Detroit 26, Michigan;

Larry A. Eskilsen, 1111 E Street, N. W., Washington 4, D. C., Attorneys.

[fol. 115] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 117] Clerk's Certificate to foregoing transcript (omitted in printing):

SUPREME COURT OF THE UNITED STATES

No. 74—October Term, 1959

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AMERICAN TRUCKING ASSOCIATION, INC., et al., Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE  
COMMISSION, et al.

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ORDER NOTING PROBABLE JURISDICTION—October 12, 1959

Appeal from the United States District Court for the  
District of Columbia

The statement of jurisdiction in this case having been  
submitted and considered by the Court, probable jurisdic-  
tion is noted.

October 12, 1959

[fol. 121]

**Plaintiff's Exhibit 1****BEFORE THE INTERSTATE COMMERCE COMMISSION****Docket No. MC-78787****(Sub. 34)****In the Matter of****APPLICATION OF PACIFIC MOTOR TRUCKING COMPANY, 65 Market Street, San Francisco, California, Contract Carrier, Irregular Routes.****Transcript of Hearing—January 18, 1956****Conference Room,  
Room 226, Old Mint Building,  
Fifth and Mission Streets,  
San Francisco, California.****Met, pursuant to notice, at 9:30 a.m.****BEFORE:****JOINT BOARD NO. 11—PERRY O. DELAP, Supervisor  
Motor Permits, for Public Utilities  
Commissioner of Oregon.****Also present: F. ROY LINN, Examiner, Interstate Commerce Commission.**

. . . . .

**[fol. 122] O. D. ETZEL was sworn and testified as follows:****Direct examination.****By Mr. DeLap:****Q. Will you state your name, please?****A. My name is O. D. Etzel, E-t-z-e-l.****Mr. Meinhold: Excuse me, do you have a copy of that exhibit?**



The Witness: Yes, sir.

By Mr. Meinhold:

Q. What is your business address, Mr. Etzel?

A. My business address is 65 Market Street, San Francisco, California.

[fol. 123] Q. You prepared a statement setting forth your qualifications and your proposed testimony in this proceeding?

A. Yes, I have; and I have just passed a copy of that to the Board as a part of the record.

Q. Will you please read the statement?

A. (Reading) "I am employed by Pacific Motor Trucking Company in the office of its Vice President as Executive Assistant. I have been employed by Pacific Motor Trucking Company in various capacities since its incorporation in 1933.

[fol. 124] Pacific Motor Trucking Company is authorized [fol. 125] by certificate of Public Convenience and Necessity issued in Docket No. MC-78786 by the Interstate Commerce Commission to operate as a common carrier between Oakland and Ashland, Oregon, and between Ashland and certain other Oregon points which are stations on line of Southern Pacific Company, as set forth in Appendix D attached to this application.

a Rights set forth in item No. 13 of said certificate sets forth the only service Pacific Motor Trucking Company is authorized to perform between Oakland, California, and Ashland, Oregon, as a certified common carrier.

It authorizes transportation of general commodities, except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

As a contract carrier we propose to transport in initial movement new automobiles, trucks and buses in special equipment.

We have been advised by the Director of Bureau of Motor Carriers that it is the informal opinion of the Commission,

Division 5, that Pacific Motor Trucking Company is not authorized in the certificate referred to, to use special automobile equipment for transportation of automobiles.

In the event the Commission should find that operations authorized in such certificate and those proposed in instant [fol. 126] application would result in a dual service not consistent with the public interest and with the national transportation policy, it would be our purpose if the Commission so required to seek modification of present certificate of public convenience and necessity so as to be relieved of obligation to act as a certificated common carrier of automobiles from Oakland to points in Oregon served by Southern Pacific Company."

Q. Mr. Etzel, do you know how many units of auto transport equipment Pacific Motor Trucking Company has at the present time?

A. Yes, sir. Pacific Motor Trucking Company owns 352 units of special equipment designed for the transportation of automobiles.

107, approximately 107 units of that equipment is assigned at Southgate and 61 units, approximately, are assigned at Melrose, that is, assigned to the service provided for Chevrolet Division, General Motors Corporation, at Oakland, California.

[fol. 127] GEORGE D. CROX, was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Will you please state your full name for the record, Mr. Cron?

A. George D. Cron, C-r-o-n.

Q. And what is your business address?

A. 69th and Foothill Boulevard, Chevrolet Plant, Oakland.

Q. And what is your occupation?

A. Traffic Manager.

Q. That is, Traffic Manager of Chevrolet Oakland Division, General Motors Corporation?

A. That is correct, and Fisher Body, Oakland.

Q. Yes.

A. Also.

Q. How long have you occupied that position?

A. I have been with the corporation in Oakland for 34 years and have held the Traffic Manager's job for the past 30 years.

Q. And as Traffic Manager, do you have charge of all the transportation requirements of your plant?

A. I do.

Q. Reference has been made to Plants No. 1 and 2. What activities are conducted at those plants?

A. Well, at plant 1 we produce only passenger models; at plant No. 2 all commercial vehicles are produced, at plant No. 2, commonly known for the record as 10910 East 14th.

Q. That is Plant No. 2?

A. That's right.

Q. By "Commercial automobiles" you mean trucks as they are properly known?

A. That is correct.

Q. Do you ship from those plants the assembled passenger automobiles and trucks to various places in the Western United States?

A. We do.

Q. Into what states do you make those shipments?

[fol. 129] A. Oregon, Washington, Idaho, Utah, Nevada.

Q. What transportation agencies do you use, that is, do you use rail and trucks?

A. We use truck in the State of California, and rail interstate, except for Nevada, which we use truck into Reno and Minden, Nevada, Carson City.

Q. Yes. On the shipments into Nevada, what trucking company are you using?

A. Pacific Motor Trucking.

Q. Is that a contract operation?

A. Right.

Q. How are you presently shipping your automobiles into Oregon?

A. By rail.

Q. That is by Southern Pacific Company?

A. By Southern Pacific Company, yes, sir.

Q. Can you give us some idea of the approximate volume of your shipments into Oregon?

A. Well, in the State of Oregon, I would estimate that we ship approximately 10,000 cars a year; that is, trucks and passenger cars.

Q. Yes. Now, does that figure relate to points on the Southern Pacific Company that would be served?

A. Chiefly, chiefly, yes.

Q. Chiefly points on the Southern Pacific Company that [fol. 130] would be served in contract carrier truck operations if this application is granted?

A. That's right.

Q. Do you propose to change your method of transportation into Oregon from rail to contract truck carrier?

A. If this permit is granted, yes, we do, for the reason that the dealers are complaining now of the rail shipments over that which our competitors are using. In other words, our competitors are using truck to these points where we ship by rail, and they are able to obtain quicker deliveries at the least cost to them at their store door delivery; whereas, our cars are being shipped by rail to those dealers which necessitates their unloading and delay in delivering as well as the length of transit time.

This has been growing more and more every year, and at the present time our plant manager and our Region Sales Manager and our Zone Manager at Portland are very hot on me to extend our rights so as to permit trucking of automobiles to meet the competitive situation.

Q. And you find that it does take longer to get your shipments by rail than it would be by truck?

A. Yes, it does.

Q. Now, is Pacific Motor Trucking Company serving you in contract carrier service exclusively at your Chevrolet plant in Oakland; that is, with respect to transportation of Chevrolet automobiles and trucks?

A. That is correct, since 1935.

Q. And the service has been satisfactory contract carrier?

A. That is correct.

Q. Is there any particular reason why you require the service of a contract carrier as against a common carrier?

A. Because we prefer a contract carrier for the reason that we like the sole operation for ourselves, in other words, to strictly serve the Chevrolet account and to take care of the need in any emergency that may arise.

Q. Is it what you would designate as a highly specialized service?

A. That is correct.

Q. And the manner in which it is conducted is very similar to a proprietary operation; is that not true?

A. That is true.

Q. What are your requirements with respect to the transportation of automobiles in connection with the ability to accumulate or store them? Must they be moved as they are produced, or can you accumulate them and build up a supply and then ship them out?

A. No, we do not build up a supply. We, I presume, produce our automobiles in a different manner than any other manufacturer or assembler inasmuch as we build on dealers' orders, and our distribution is such that approximately 33 $\frac{1}{3}$  per cent of our production is our truck production, and 66 $\frac{2}{3}$  is passenger production.

It operates a little more one way than the other, and that means that we must consolidate our dealers' orders in order to meet our load accommodations.

This has been a pattern that has been sustained in Chevrolet for quite some time so when a dealer's truck is ready there are passenger cars ready at the same time, or two trucks or two passenger cars at the same time, and they automatically are shipped in one load.

Q. And would it be feasible for you to ship the trucks and the passenger cars by separate carriers?



A. No, it wouldn't, because then what would we do with the two passenger cars we may have for the dealer that has two trucks.

We would have two passenger cars and be building up passenger cars with no means of disposing of them.

Q. And that is the policy of the Chevrolet Division of General Motors Corporation to transport these automobiles and trucks in units of so many automobiles and so many trucks?

A. That is correct, in our mixed loads.

Q. Mixed loads?

A. Yes.

Q. Is it necessary that you have a carrier that is devoting all of his facilities to your transportation, a contract [fol. 133] carrier?

A. Yes, it is.

Q. Do you find that Pacific Motor Trucking Company has had the necessary equipment and facilities in the past to serve your plants?

A. They have.

Q. You heard Mr. Etzel's testimony with respect to the yard facilities adjacent to your plant at Oakland?

A. Yes, sir.

Q. And you agree with his statement in that respect?

A. I do.

Q. Do you have an employee who occupies a joint office with an employee of Pacific Motor Trucking Company?

A. Well, he is adjacent to a PMT employee, not in his office, but is adjacent to the PMT office.

We have an employee connected with PMT, and their employees are in our office to sign our orders at the time of release.

Q. Does the Pacific Motors Trucking Company maintain a dispatcher in that yard at all times?

A. At all times.

Q. Are there any other facilities available so that other carriers, motor carriers, could serve your plant in the transportation of your Chevrolet automobiles and trucks?

A. Not within the immediate vicinity of our plant.

Q. Is there any unoccupied land in that vicinity, to your [fol. 134] knowledge?

A. No, sir.

Q. Would it be necessary to pass over the property of Pacific Motor Trucking Company in order to pick up and transport automobiles from your Chevrolet plant?

A. That is our outlet.

Q. Is it of any advantage or benefit to you to have—well, strike that, please.

Your plant is also served by Southern Pacific Company rail facilities?

A. That is correct.

Q. Is it of any benefit to your firm to have available by one organization both truck and rail facilities?

A. Well, it has been that way.

Q. Would you please say why that is true?

A. Well, it is better to deal with a contract carrier, if I understand your question correctly. Would you repeat it again, please?

Q. I want to know if it is of any advantage to you to have both types of operations conducted by one carrier organization, having in mind that the Pacific Motor Trucking Company is a wholly owned subsidiary of Southern Pacific Company?

A. We haven't had any experience otherwise. It has been very satisfactory and the relationship has been one we do not have any question over.

[fol. 135] Q. Yes. You have heard the testimony that Insured Transporters, Inc. has authority to transport trucks from Plant No. 2 to points in Oregon?

A. I have.

Q. You understand that to be the case?

A. I do.

Mr. Lyons: You mean from Oakland, don't you?

Mr. Meinhold: I meant to say from Oakland. Well, I am restricting it to his business.

Mr. Lyons: Oh.

Mr. Meinhold: From his plant No. 2.

By Mr. Meinhold:

Q. In his plant No. 2, that's correct, isn't it?

A. That's correct.

Q. Do you know of any motor carrier that has authority to transport passenger automobiles from Oakland to points in Oregon?

A. I do not.

Q. Either common carrier or contract carrier?

A. No.

Q. You are only concerned, are you not, with Chevrolet automobiles and Chevrolet trucks?

A. That is correct.

Q. And those would be the automobiles and trucks that would move for you by Pacific Motor Trucking Company?

[fol. 136] A. That is correct.

Q. And based off your testimony, if this authority is granted, you would use it, of course?

A. We intend to.

Q. And you will enter into appropriate contracts covering that service?

A. That is correct.

Q. You are aware of the fact that Pacific Motor Trucking Company presently has temporary authority to conduct this operation?

A. Yes.

Q. That authority has not been used to date?

A. No, it has not.

Q. Has there been an occasion for its use?

A. Well, there was, but we happened to get around it in a way that it wasn't necessary to use it at that time; but, as I say, that was just the start of what is being—pressure being brought to bear by our dealers and our own organization to truck automobiles, and we want to obtain that right.

Q. Yes. Now, in other words, you requested Pacific Motor Trucking Company to obtain the temporary authority because of a condition that exists wherein there was a threatened shortage of box cars for rail movement?

A. That is correct.

Q. And your plant was in very heavy production at [fol. 137] that time, was it not?

A. That is right.

Q. But with respect to the permanent authority, that is not based on any emergency considerations?

A. No, it is not.

Q. You desire that authority because of necessity you meet competition, and the other reasons that you assign; is that correct?

A. That is correct.

Mr. Meinhold: I think that is all.

Mr. Lyons: No questions.

By Exam. Linn:

Q. Are both your plants located within the Municipal limits of Oakland?

A. That is right. They are approximately three miles apart.

Q. At this plant No. 2, do you produce Chevrolet trucks and GMC trucks on the same assembly line?

A. That's right.

Q. As a matter of fact, you manufacture in an area in which two types, two brands of trucks are produced and are not separated in any way?

A. No. The only thing is GMC has a portion of property adjacent to ours at Plant No. 2, and after the cars are—the trucks are O.K.'d, they are transferred to GMC's lot, and they become their property.

Q. But the two types of trucks are produced on the same assembly line?

[fol. 138] A. That's right.

Q. What is the exact trade name of your two types of trucks?

A. Chevrolet and GMC.

Q. Can the two types of trucks be distinguished from each other by their physical characteristics?

A. Yes, they can.

Q. In what way?

A. Well, by their design, their front end design, and the name on the front end. They have "GMC" on the front

end of their truck, and we have "Chevrolet" on the front end of our truck.

They have "GMC" on the back of their tail gate, and we have "Chevrolet".

Q. Any other physical characteristics by which the two types of trucks can be distinguished?

A. Not necessarily, except for paint combinations, the colors are different.

Q. Do you expect to continue rail service from your Oakland plant?

A. Do we expect to continue rail shipments?

Q. Yes.

A. To the extent of beyond where we intend to truck.

Q. Could you estimate approximately how much, what percentage of your volume to Oregon would be moved in PMT services as distinguished from the rail service?

[fol. 139] A. I would say about 70 per cent.

Exam. Linn: That is all I have.

Mr. DeLap: I have a question.

By Mr. DeLap:

Q. How do you presently serve your Oregon dealers at off-rail points?

A. Well, the dealer has to come to the rail head and pick up his cars and deliver them.

Q. They would still be shipped that way under this arrangement?

A. Well, I presume they would.

Mr. DeLap: That is all I have.

Mr. Meinhold: In line with the questioning, I would like to ask this.

By Mr. Meinhold:

Q. Is there any distinguishing characteristic between the GMC and the Chevrolet in so far as the motors are concerned?

A. Oh, yes. They are different motors, yes.

Q. Are the ratings different?



A. Yes. I am not a mechanic, I don't know much about an engine.

Q. I don't either. I am getting in deep water.

A. The radiator design is entirely different. The grille work, the chrome work, is different.

Q. Does GMC and Chevrolet manufacture the same size truck?

A. Primarily, yes. I think the GMC is rated a little higher than Chevrolet.

[fol. 140] Q. A little greater capacity?

A. Yes.

Mr. Meinhold: I think that is all.

Mr. DeLap: Anything further?

Mr. Lyons: No questions.

Mr. DeLap: Very well, that is all.

(Witness excused.)

• • • • •  
O. D. ETZEL, previously duly sworn, testified further as follows:

Redirect examination.

[fol. 141]

By Mr. Meinhold:

Q. To your knowledge, has there ever been any complaint or claim of discrimination advanced by any shipper or consignee or other person resulting from the holding of [fol. 142] dual authority by Pacific Motor Truck Company?

A. There has not.

Q. And, in your opinion, if this authority is granted, will any discrimination result in so far as any shipper or consignee or other person is concerned?

A. I don't believe any actual discrimination would result, and I say that for the reason that the common carrier operating rights held by Pacific Motor Trucking Company between San Francisco, Oakland, and Ashland, Oregon, has been operating for a good many years, something in excess of ten, by Pacific Motor Trucking Company; and during that period, I have no recollection of an automo-

hile ever having been offered by the public for transportation.

While I have not analyzed all the freight bills covering that period of operation, I did ask our freight traffic manager for his recollection on the subject, and he confirms my opinion; namely, that he does not recall of an automobile having been offered for transportation, and it would seem that with the small use of that common carrier service by the public, there wouldn't be much discrimination involved.

Q. You have state-wide authority in California to transport assembled automobiles and assembled trucks as a contract carrier in intrastate commerce, have you not?

A. We do.

Q. And you are performing operations of that nature at [fol. 143] all of the plants in General Motors Corporation in the State of California?

A. We are serving, I think, in the State of California, every General Motors dealer.

Q. And that has existed for some period of time?

A. It has, since 1935, to the northern half of the state, and I believe within a period of about three or four years thereafter to points in the Southern part of the State from that territory.

Q. And to your knowledge has there ever been any complaint or claim of discrimination in so far as intrastate commerce is concerned, resulting from dual operations of Pacific Motor Trucking Company in California?

A. No, there never has been such a complaint.

Q. As a matter of fact, Pacific Motor Trucking Company does conduct common carrier operations in California, does it not?

A. It conducts very extensive common carrier operations in California, and many of those operations are conducted between points which are common to the service being provided as a contract carrier.

Q. But, of course, you don't transport the same commodities between the same points both as a contract and common carrier?

A. We do not. Our common carrier tariffs are restricted to the transportation of automobiles.

[fol. 146]

**Plaintiff's Exhibit 2**

**BEFORE THE INTERSTATE COMMERCE COMMISSION**

**Docket No. MC-78787**

**(Sub. 35)**

**[Title omitted]**

**Docket No. MC-78787**

**(Sub. 36)**

**[Title omitted]**

**Transcript of Hearing—July 10, 1956**

Room 238,  
Old Mint Building,  
San Francisco, California.

Met, pursuant to notice, at 9:30 a.m.

**BEFORE:**

F. Roy Linn, Examiner,  
Interstate Commerce Commission.  
and

JOINT BOARD NO. 47—A. MICHAEL BERNSTEIN, Special  
Assistant to the Attorney Gen-  
eral, Arizona Corporation Com-  
mission.

• • • • •

[fol. 147] R. K. BOOTH was sworn and testified as follows:

[fol. 148] Direct examination.

By Mr. Meinhold:

Q. Have you given your name?

A. No. My name is R. K. Booth.

Q. And your office address?

A. 110 Market Street, San Francisco.

Mr. Jacobson: Go slow, so if I have any objections I can interpose them.

The Witness: Yes.

By Mr. Meinhold:

Q. What is your occupation?

A. I am vice-President of Pacific Motor Trucking Company.

[fol. 149] Q. You refer there to Melrose. Is that where the Oakland plant is located?

A. The Oakland plant is located in a sub-community in Oakland called Melrose.

Q. Proceed.

A. (Reading) There are presently based at Melrose 36 power units and 33 non-power units available and used in transporting automobiles and trucks. We have been advised by the Traffic Manager of Chevrolet Oakland Division of General Motors Corporation that based on this year's production it is estimated that 31 trucks and 112 [fol. 150] passenger cars will be produced and transported to dealers at Austin, Tonopah and Yerington, Nevada. In our opinion, this additional movement can be handled by our present equipment and without additional investment.

Similarly, at Van Nuys (Raymer), Pacific Motor Trucking Company has established a receiving yard adjacent to Chevrolet's assembly plant, where we likewise have employees stationed to arrange transportation of the vehicles

when they are released from the Chevrolet yard at that point into our yard for distribution. Service at this point for account of Chevrolet-Los Angeles Division General Motors Corporation, has been conducted by Pacific Motor Trucking Company since the facility was constructed in the latter part of 1947. No other highway transportation has been used by Chevrolet-Los Angeles Division,—

Mr. Jacobson: Just a moment. At that point I move to strike that on the ground that no proper foundation has been laid. I would like to ask the witness a couple of questions on voir dire before he proceeds. May I, Mr. Examiner?

Mr. Meinhold: No objection.

Exam. Linn: Go ahead.

Voir dire examination.

By Mr. Jacobson:

Q. What investigation, if any, have you made to determine whether or not any motor vehicles have been moved out of the Raymer plant by any other carrier by truck-away?

[fol. 151] A. I know from my own knowledge that the Chevrolet people at Raymer use Pacific Motor Trucking Company exclusively.

Q. I say, what investigation have you made that qualifies you to make the statement that no other carrier has transported any motor vehicles, new automobiles or trucks, out of the Raymer plant?

Mr. Meinhold: To dealers?

Mr. Jacobson: To dealers, or anybody.

A. I personally have made no investigation, but I know we handle—

By Mr. Jacobson:

Q. Just a moment. You have made no investigation, is that correct?

A. That is what I said.



Mr. Jacobson: I move that that portion of the answer be stricken, that portion of the testimony reading as follows, on the ground that no proper foundation has been laid for it, "No other highway transportation has been used by Chevrolet-Los Angeles Division, General Motors Corporation, at Raymer for distribution of its products to dealers."

Mr. Meinhold: Before you rule, may I ask a further question of the witness?

Exam. Linn: Go ahead.

Direct examination (resumed).

By Mr. Meinhold:

Q. In the event any other highway transportation were used by Chevrolet-Los Angeles Division, General Motors [fol. 152] Corporation, at Raymer, for distribution of its products to dealers, would you know about it?

A. I certainly would. It would be physically impossible to use somebody else at that location without going through our yard. I would certainly hear about anyone going into our yard.

Q. Have you discussed the matter with the Traffic Manager of General Motors Chevrolet plant at Los Angeles?

A. Yes.

Q. What did he advise in that respect?

Mr. Jacobson: I object to that as hearsay twice removed. No investigation was made. It is heaping inference on inference.

Exam. Linn: Perhaps it is sufficient if the testimony shows that any movement of new vehicles by motor carrier would require movement through the PMT yard.

Mr. Meinhold: And he would know about it.

Exam. Linn: Yes.

[fol. 153] GEORGE D. CRON, was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Please state your name and address?

A. (Reading) George D. Cron—C-r-o-n—69th Avenue and Foothill Boulevard, Oakland, California.

Q. What is your occupation and title?

A. I am Traffic Manager of Chevrolet-Oakland Division of General Motors Corporation and Fisher Body-Oakland Division of General Motors Corporation.

Q. Please summarize your experience in the field of traffic management.

A. I have been with the Corporation 34 years, and of those I have been Traffic Manager 30 years.

Q. Will you please describe the business of Chevrolet at Oakland?

A. Pardon?

Q. Will you please describe the business of Chevrolet at Oakland?

A. The business of Chevrolet-Oakland is to assemble passenger cars and trucks at the Oakland, California, plant. We employ approximately 2500 persons in these [fol. 154] operations. Exhibit 2 shows the general character of the physical facilities at which we transfer assembled units to Pacific Motor Trucking Company for highway movement.

Q. You heard the testimony of Mr. Booth, did you not?

A. I did.

Q. Did he correctly describe the operations at the Oakland plant?

A. He did.

Q. What is the distribution area for these Chevrolet products?

A. The distribution area for our Chevrolet products is northern California, Oregon, Washington, Idaho, Utah and Nevada; also Alaska and the Hawaiian Islands.

Q. How many dealers do you have in this area?

A. We have dealers located in 578 cities or towns at the present time. Of this total there are only ten dealers in the State of Nevada, and only two covered by this application.

Mr. Jacobson: May I ask, Mr. Meinhold, these 578 dealers in cities or towns, are they in the states included in this paragraph above?

Mr. Meinhold: I understand that is the whole area.

By Mr. Meinhold:

Q. Is that correct, your whole distribution area?

A. That is right.

Mr. Jacobson: That doesn't include Arizona?

Mr. Meinhold: No.

[fol. 155] By Mr. Meinhold:

Q. You don't serve Arizona from your plant, do you?

A. We do not.

Q. What was the approximate production of Chevrolet units at Oakland during the year 1955?

A. We produced 100,716 passenger cars and 24,800 trucks during the year 1955.

Q. Will you please state the volume of production for the first six months of 1956?

A. During the first six months of 1956 there were produced at Oakland 43,514 passenger cars and 13,221 trucks.

Q. What percentage of this production was moved from the plants in truckaway and driveaway service?

A. Approximately 50% of this production now moves by rail and the balance was in truckaway and driveaway service. The driveaway service is only utilized in the metropolitan area of the plant except in emergencies.

Q. Will you please explain to us what you mean by "emergencies"?

A. Emergencies cover those units of commercial vehicles which are owned by State regulatory bodies, such as the State of Nevada, where they ask for optional equipment from outside body builders to be placed on our chassis, and such bodies being too large to load in a box-

car, or load on any truckaway equipment, which makes it necessary, under contract, to deliver them to destination by driveaway service.

[fol. 156] Q. Normally you would not use driveaway service to transport the automobiles from Oakland to these points in Nevada?

A. Normally, no.

Q. What is the estimated annual movement of passenger cars and trucks to the points involved in this application?

A. The estimated total number of trucks to the points involved is 31 trucks and 112 passenger cars, which we anticipate will be moved in 1956.

Q. Approximately how many units moved to the entire State of Nevada, including the points involved in this application, during the first six months of 1956?

A. 1100 passenger cars and 350 trucks.

Q. What method do you follow in making shipments of passenger cars and trucks?

A. Our method of shipment requires us to ship mixed units, due to the production of trucks and passenger cars to meet dealers' orders. This is due to the fact that our dealers handle both Chevrolet passenger cars and trucks and generally order in mixed quantities. Therefore, shipments may be made in combinations of two trucks and two passenger cars, or three trucks and one passenger car, in a manner in which they place their orders with us.

Q. Or any other combination?

A. Or any other combination.

Q. Did your Company ask PMT to file this application? [fol. 157] A. Yes, PMT has served us for many years and we want it to provide this additional service.

Q. What prompted your request?

A. One of the reasons for this application is to get service in the delivery of our products which is comparable to that of our competitors which are using truckaway into Nevada. There are a number of advantages to such service. They include quicker transit time, store-door delivery, with no expense to the dealer whatsoever, and the arrival of cars generally in better physical condition. In addition, we have been confronted with severe car shortages from time to time, and it is necessary for us to have both

types of service to insure distribution of our product. The advantages of truckaway service are particularly important insofar as the points involved in this proceeding are concerned, because none of these points are served directly by rail. The distance from Yerington to the railhead, namely, Wabuska, is 12 miles; from Austin to the railhead, Fallon, 113 miles, and from Tonopah to the railhead, Mina, 70 miles.

Q. Were these three points that you have named at one time served by rail?

A. They were, by the Short Line Railroad, which has since been abandoned.

Q. What are the respective rail and truck transit times involved in serving these three points?

[fol. 158] A. The transit time, Oakland to the railheads, namely, Mina, Wabuska and Fallon, is third morning except on cars loaded on Thursday, which makes fourth-morning delivery for the reason these cars are handled in local service. Cars loaded on Thursday arrive in Sparks, Nevada, on the week-end and no service is afforded to these three railhead points on Sunday. This may be compared with normal transit time by truck from Oakland to Yerington in 10 hours, to Tonopah in 14 hours, and to Austin 12 hours. The advantage of such service directly to the dealer's place of business is apparent.

Q. Do you have occasion to make split deliveries of your shipments?

A. In the movement of our product in many cases split deliveries are necessary, especially in the case of small dealers who do not receive their shipments in carloads and must receive them mixed with shipments to larger dealers by rail. This requires these small dealers to drive considerable distances to pick up their cars and return to their dealership. On the other hand, truckaway handling affords a faster and more economical method and permits split delivery of units at the small dealer's place of business without any additional expense to him.

Q. Why do you use contract service in your operation?

A. It has been the policy of the Chevrolet Division for many years to utilize contract carrier service in the delivery of passenger cars and trucks. This is



a highly specialized form of transportation and requires a service which is available to us at all times without any interference whatsoever. Contract arrangements provide the greatest assurance of transportation availability at all times which is essential in the distribution of our product, inasmuch as we are geared to a constant flow from the assembly line to our dealers. In view of our distribution methods, our cars are built on dealers' orders and normally there is no accumulation of automobiles for storage purposes at any time. As a matter of fact, we do not have room for storage of more than a day's production in our plant. The smooth operations of our plants in maintaining the free flow of products require the very closest coordination between our operations and those of the transportation agency which serves us. This requires coordinated physical facilities and the closest coordination of dispatching operations. To obtain these objectives it is essential that we have the services of a carrier which is contractually obligated to give us specialized service without interference of other obligations, such as those as are necessarily assumed by a common carrier. These basic considerations account for general Chevrolet policy throughout the United States of dealing exclusively with contract carriers.

Q. You are familiar with the general policy of the Chevrolet [fol. 160] Division throughout the United States, are you?

A. Yes, sir.

Q. How has this worked out in your use of PMT service at Oakland?

A. The coordinated terminal arrangements with PMT at Oakland provides a striking illustration of the importance of a satisfactory contract carrier arrangement. Pacific Motor Trucking Company has its receiving yard adjacent to our yard, the two being separated by a wire fence. Cars are released to PMT through our gate immediately into their yard. These yards furnish the only available exit for outbound products, and there is no other physical way to move them. We maintain an employee who releases these cars after PMT's inspector inspects them

and accepts them by signing our orders. Offices which these employees occupy are adjacent to one another. PMT maintains a dispatching force in the yard at all times, which is essential to the expedited movement of our products, since we will clear as many as 30 units an hour to PMT.

Q. I think the operations have been described to some extent by Mr. Booth. Would you state that they have been correctly indicated by him?

A. I believe Mr. Booth covered that this morning.

Q. You don't feel it is necessary to go any further into that?

A. Not unless it is wanted.

[fol. 161] Q. Is it possible for you to separate dealer's orders as between passenger cars and commercial vehicles and ship each type separately?

A. No. Generally we do not ship passenger cars separately in loads or ship our truck models separately. All our orders from dealers are a combination of four units, whether it be passenger cars or trucks. These units are coordinated according to dealer's orders to come off the line simultaneously so as to make a combination of passenger cars and freight vehicles available for shipment by PMT. It would be impossible for us to try to segregate our truck and passenger models for the reason of the many dealers we have that get mixed combinations and it would tend to block our yard in order to make the combinations. The system we use at present is economical and expedites the movement of our product without any delay.

Q. When you say "PMT" you are referring to Pacific Motor Trucking Company?

A. Correct.

Q. How long has PMT been performing service for Chevrolet in the transportation of passenger automobiles and trucks as its exclusive contract carrier at Oakland?

A. We entered into a contract with PMT in 1935 and that company has performed service for us exclusively since that date without any interruptions.

[fol. 162] Q. Will you please state whether the service

which has been rendered by PMT during this period has been satisfactory?

A. The contract which we have with PMT has been very satisfactory over all these years; the principal reasons being, it has financial responsibility and suitable facilities to provide an efficient distribution of our product. Its contract carrier operations represent a highly specialized and personalized service which is available to us at all times without any interference whatsoever. As I have stated, our production and distribution method contemplates that cars and trucks are built on dealer's orders and without accumulation for storage purposes. PMT has consistently coordinated its transportation to meet our production needs and output fluctuations as they take place and its services have been available for any shipments tendered.

Q. Will you please give us an example of the coordinated transportation to which you have just referred?

A. Our releasing arrangement provides a good example. All units are supplied on an individual order or orders of four for a certain dealer or dealers. These units are produced on a daily date schedule and are moved from our yard after final O.K. by Chevrolet inspectors to our gate—and by "gate" I mean of the PMT yard—where they are inspected by PMT inspectors and then released to PMT, after acceptance of our shipping order. Normally, shipments [fol. 163] are made and on the road within thirty minutes after release.

Q. Has PMT had available all the equipment necessary to meet your highway transportation needs?

A. Yes—they have had available at all times for our use the equipment required for our shipments, including specially designed trailers for the exclusive handling of Chevrolet automobiles and commercial vehicles. This equipment has been modified from year to year to meet requirements occasioned by model changes in our cars and trucks.

Q. Are there any other contract carriers available for transportation of automobiles and trucks from Oakland to the points of Austin, Yerington and Tonopah, Nevada?

A. I know of no other highway contract carrier having

authority to provide truckaway and driveaway service in the transportation of Chevrolet automobiles and trucks for us to the destinations involved in this application.

Even if there were, it would not be consistent with considerations of economy and efficiency for us to depart from our policy of dealing exclusively with one contract carrier in providing our dealers with adequate and dependable service.

Mr. Meinhold: You may cross examine.

Cross examination.

By Mr. Jacobson:

Q. In other words, by your last statement, irrespective of how many existing available services are in the field at the present time, it would not be your intent to patronize [fol. 164] any of them, is that correct?

A. That is correct.

Q. You read into your testimony three words. On page 5, it says, "As a matter of fact, we do not have room for storage of more than a day's production", and then you read there, or added, "in our plant".

Was the rest of that sentence omitted intentionally, or did you have something in mind?

A. I mean in our plant.

Q. You meant in your plant?

A. Correct.

Q. Who owns the property immediately adjacent to it, occupied by PMT?

A. PMT.

Q. And the property was originally purchased in 1935 from Southern Pacific, was it?

A. That I don't know.

Q. You have been there for—

A. I have been there 34 years, but the property was always in their possession.

Q. In whose possession?

A. Either the Southern Pacific or PMT.

Q. I say, the plant was acquired, your plant was acquired from the Southern Pacific, their property?

A. No, I would say not. Our plant was established in 1916.

[fol. 165] Q. 1916?

A. Yes.

Q. You were always served by rail facilities?

A. Right.

Q. You say it is the policy of General Motors, or only Chevrolet throughout the United States to deal exclusively with contract carriers?

A. Yes. I am speaking of Chevrolet.

Q. Are you familiar with their policy all over the United States?

A. I have been advised of their policy.

Q. Do you have definite knowledge as to whether or not there are common and contract carriers serving certain Chevrolet plants at other points in the United States?

A. I believe not.

Q. Do you know of any other plants in the United States of Chevrolet that have plant facilities similar to that which you have in Oakland, where they are only accessible through the yard of a railroad?

A. I do not.

Q. Do you know of any other plant where only one carrier is admitted to receive automobiles?

A. I have been advised there are several such plants.

Q. Throughout the United States where you have a similar situation?

[fol. 166] A. Yes. I don't know if it is a similar situation, but they have one contract carrier.

Q. Do you know of any plant that has rail service as the only method of transportation out of the plant?

A. Not to my knowledge.

Q. You testified that in rare exceptions, or in emergencies, the unit had to have a body on it?

A. Correct.

Q. At some other location?

A. Yes.

Q. And then it is going to move by driveaway to the State authorities in Nevada?

A. If the unit is too large to be placed in a boxcar or truckaway equipment, yes.



Q. Have you in the past had experiences where the unit, when so equipped, couldn't be moved in boxcars?

A. Yes, sir.

Q. How did they move to points and places in Nevada?

A. Driveaway.

Q. Who drove them?

A. PMT.

Q. Under what authority?

A. Under their rights.

Q. To what points did you move any such vehicles within the past year?

[fol. 167] A. I would say Reno, Nevada.

Q. You say you know of no other carrier—are you familiar with the operative rights of Dallas & Mavis Forwarding Co.?

A. No.

Q. Do you know they have authority to serve points and places in Nevada in driveaway on heavy-duty trucks and truck chassis?

A. No.

Q. If such a service were available, and you had business moving in there, would you give them the transportation to perform?

A. No. We want PMT service.

Q. In other words, it is your position that unless you can get PMT you are going to take nothing, is that it?

A. It boils down to that.

Q. You have dealers throughout the State of Nevada, haven't you?

A. Correct.

Q. And all of those dealers are not located on the rail facilities of the Southern Pacific, are they?

A. Except these three points in this application.

Q. Aren't there dealers at any small towns in Nevada that handle your products?

A. No, sir. I testified we only had ten dealers in the State of Nevada.

[fol. 168] Mr. Meinhold: If I may interrupt. I think the witness may have not had in mind operations to Carson City and Minden.

The Witness: Yes. I mean, of this application, they are the only dealers offhand that don't have service now.

Mr. Jacobson: I thought that was what you had in mind. I wanted to clarify it.

By Mr. Jacobson:

Q. In other words, all of your other dealers have service, truckaway service out of your plant?

A. That is correct.

Q. How many years have they had that service?

A. I can't give you the exact date, but the first application was granted to PMT to truck into Nevada—do you have that date, Mr. Meinhold?

Mr. Meinhold: I don't have it offhand. I think it would appear from Exhibit 4.

Exam. Linn: 1941.

By Mr. Jacobson:

Q. So, since 1941 you have been giving some of your dealers in Nevada a truckaway service and the others you have they have had to rely on rail service?

A. Correct.

Q. How long have you known that the dealers wanted truckaway service?

A. Well, dealers are constantly asking us for service by truckaway, inasmuch as competitors are using truck service [fol. 169] into their locations.

Q. Suppose a dealer in one of these towns for which you are seeking authority should ask you tomorrow to use Dallas & Mavis Forwarding Co. to drive away a truck to them. Would you respect their wishes and render that service?

A. We control our own traffic.

Q. Who pays the freight?

A. We do.

Q. You charge it back to the dealer, don't you?

A. No, we don't. We prepay the freight.

Q. Have you a familiarity with the competitive rate situation that exists between your company and the other companies that are using truck service into Nevada?

Mr. Frizzell: I object. I don't think the question is germane to the issues in this case.

Mr. Jacobson: My position in asking these questions—

Mr. Frizzell: I object to the question asked and I would like to have a ruling from the bench.

Mr. Jacobson: My position in connection with that question is this: That normally I know the rules of procedure, I think, with respect to what is good and admissible evidence, and what isn't, but here we are confronted with a little different situation. We have got a 100 per cent subsidy here of a truck company owned by a rail company, where—

Mr. Frizzell: I object to that statement. Let us not [fol. 170] get into that. There is nothing in this record that shows there is any subsidy at all.

Mr. Jacobson: It shows it is 100 per cent owned by Southern Pacific.

Mr. Frizzell: That does not necessarily mean it is a subsidized operation.

Mr. Jacobson: Are you afraid of what I might say?

Mr. Frizzell: No. I am raising an objection to your question about some rate competition.

Exam. Linn: Read the question.

Mr. Frizzell: I don't think it is germane. I would like to have a ruling.

(Question read.)

Exam. Linn: The witness may answer the pending question as to whether or not he has that familiarity.

Mr. Frizzell: Do you have familiarity—the question is do you have familiarity with these tariffs? You should answer "Yes" or "No".

A. No.

By Mr. Jacobson:

Q. Any agreement for rates, would that be negotiated, or any contract, would that be negotiated by you or by somebody in your organization?

A. By our Traffic Director in Detroit, Michigan.

Q. Is this correct with respect to the entire plant, where you say, "These yards"—referring to the PMT yards—[fol. 171] "furnish the only available exit for outbound products, and there is no other physical way to move them."?

A. In the regular flow of traffic through our yard, O.K. yard, that is our only outlet.

Q. Have occasions arisen where those facilities have been used by trucks other than PMT that may have been under lease to them?

A. Not to my knowledge.

Q. Do you reserve the right as a shipper in an emergency, or otherwise, to instruct PMT to let other carriers, if there are any, move your vehicles through their yards?

A. We reserve the right at all times under contract with the Pacific Motor Trucking Company.

Q. So it is within your province to permit, under your contract, other carriers to move over the properties of PMT to bring in or deliver cars?

A. No.

Q. What did you mean?

A. You asked me if we permit PMT to lease other equipment to come into the yard and pick up—

Q. That isn't the question.

A. I misunderstood the question, then.

Mr. Jacobson: Read the question.

Mr. Meinhold: Why not restate it?

By Mr. Jacobson:

Q. Do you reserve the right under your contract to [fol. 172] utilize the facilities of PMT for ingress and egress to your property?

A. Correct.

Q. For other carriers, or otherwise?

A. Not other carriers; PMT only.

Q. Don't I make myself clear? In other words, the only one—you don't reserve the right to ask another carrier to come over their property to pick up an automobile in your place?

A. No, we don't.

Q. Suppose you had a strike—have you ever had such a thing happen on PMT?

A. We have had one once, but it didn't last long.

Q. Suppose a strike—

Mr. Frizzell: Mr. Examiner, I think we are getting into too much supposition here on cross examination. I object to it.

Exam. Linn: Supposing a little further, I imagine if PMT was out on strike, that perhaps some of the other carriers might likewise be out on strike.

Mr. Jacobson: Just the opposite. In the last strike the other carriers were out and PMT agreed to the thing so they could keep going. I think, in the absence of a contract here, we are faced with a rather unusual condition.

If the Examiner feels there is sufficient in the record on this, all right.

[fol. 173] Exam. Linn: Labor problems involve a special field, and perhaps we ought to discover whether there is a need for this service, or a basis on which it should be granted or denied over the long term, rather than under any strike conditions.

By Mr. Jacobson:

Q. I will ask this, then: If you, or a traffic manager that succeeded you, or your superiors, desired to have X Company come in and haul some automobiles or trucks, do you reserve the right to request PMT to let them utilize the facilities?

A. No.

Q. Now, assuming—well, I won't assume—where, in these cases that trucks were delivered to the Highway Department in Nevada, where were the installations made, in San Francisco, Oakland, or some other place?

A. That all depends. It could be in Oakland, or it could be in San Francisco.

Q. Regardless of where the installations were made, they moved the vehicles?

A. Right.

Q. Who moved the vehicles to the installation point?



A. PMT.

Q. After the installations were made they then moved them in driveway to the destination?

A. Yes, a continual move.

[fol. 174] Mr. Jacobson: That is all.

Mr. Meinhold: That is all.

By Exam. Linn:

Q. I note you indicate you will desire this service for two dealers at points in Nevada and that three points are involved. Can you tell us whether one of those dealers has a place of business at two of these destination points?

A. At the moment we do not have a dealer at Austin, but we anticipate appointing a dealer at that point. We want it covered.

Q. What has been done in the way of negotiations looking toward the employment of a dealer at Austin?

A. That is handled by our Sales Division. I wouldn't have knowledge of that.

Q. Do you know whether a dealer has in the past handled Chevrolet products for you at Austin?

A. Yes, they have.

Q. Up to what time?

A. I would say about four years ago.

Q. Your plants at Oakland are located within the municipal limits of Oakland, I take it?

A. Yes, sir.

Q. Do you know whether any other manufacturer of automobiles maintains a plant in the vicinity of the Chevrolet plants.

A. Not in the City of Oakland. You are speaking of a passenger plant, I assume.

[fol. 175] Q. Where there is a manufacturer of automobiles at any place adjacent to the City of Oakland?

A. We have Ford at Milpitas.

Mr. Meinhold: That isn't adjacent, is it?

The Witness: No.

Mr. Jacobson: Aren't there some trucks manufactured just out of Oakland?

The Witness: There is Peterbilt, which builds heavy equipment.

Exam. Linn: Where is the Peterbilt plant?

The Witness: It is in the Oakland city limits. They build big equipment.

Exam. Linn: Does counsel wish to develop any other facts of record which would show the necessity of restricting this service, if it is authorized, to the Chevrolet plants at Oakland?

Mr. Meinhold: May we have a moment, please?

Exam. Linn: Yes.

(Pause.)

Mr. Meinhold: We haven't any additional matter to offer in that connection, Mr. Examiner. However, we do have some further questions to ask of the witness on redirect.

Redirect examination.

By Mr. Meinhold:

Q. Mr. Cron, you mentioned the Peterbilt factory at Oakland. I believe you said that they manufacture heavy [fol. 176] trucks?

A. These big Diesel trucks; yes.

Q. What do you mean by that? Will you describe such a truck—are you familiar with those trucks?

A. I am not too familiar with them, except I see them on the highway hauling big semi-trailers. They are big heavy units.

Q. Several ton-capacity?

A. Yes. They have Cummings motors, called Fageol motors. Those are the large heavy-duty motors.

Q. What is the rated capacity of the Chevrolet trucks?

A. Two tons, two and one-half tons.

Q. They are much smaller than the Peterbilt truck?

A. Oh, yes.

Mr. Meinhold: That is all.

### Recross examination.

By Mr. Jacobson:

Q. You are only appearing insofar as trucks are concerned, supplementing your testimony that you wanted PMT and nobody else, on behalf of the Chevrolet Truck Company, Chevrolet factory at Oakland, isn't that correct?

A. That is correct.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Any further questions of this witness?

Mr. Meinhold: None.

[fol. 177] Exam. Linn: That is all, Mr. Cron. Thank you.

(Witness excused.)

Mr. Meinhold: Our next witness is Mr. George R. Lilinthall.

GEORGE R. LILINTHALL was sworn and testified as follows:

### Direct examination.

By Mr. Meinhold:

Q. Will you please state your full name for the record?

A. (Reading) George R. Lilinthall—L-i-l-i-n-t-h-a-l-l.

Q. What is your business address?

A. Chevrolet-Los Angeles Division, 8000 Van Nuys Boulevard, Van Nuys, California.

Q. What is your occupation?

A. Traffic Manager,

Q. Of what?

A. Traffic Manager of Chevrolet-Los Angeles Division, General Motors Corporation, and Fisher Body Division—Los Angeles plant.

Q. How long have you occupied that position?

A. I have been 34 years with the corporation and have

held the Traffic Manager's position at Los Angeles for ten years.

Q. And as Traffic Manager, do you have charge of all the transportation requirements of your plant?

A. Yes, I do.

Q. Please state the activities of your plant at Los Angeles.

[fol. 178] A. We assemble new Chevrolet passenger cars and commercial vehicles. We distribute these units to dealers in southern California, Arizona, Utah, southern Nevada, and Idaho. We serve 244 dealers at approximately 215 cities or towns.

Q. What is your approximate production?

A. Our total production for the year 1955 was 122,196. In the first six months of this year, our total production was 71,875 units, of which passenger cars accounts for 83% and trucks 17%.

Q. What is the approximate volume of shipments to the points involved in this application?

A. During the first six months of 1955—

Q. Pardon me, is that 1955 or 1956?

A. You want the approximate volume of shipments to the points in this application?

Q. Yes.

A. During the first six months of 1956 we actually shipped via rail 4,452 units to these points and I estimate that approximately 9,000 units per year will move.

Q. Do you encounter competition at these points in Arizona?

A. Yes, we do.

Q. What mode of transportation do your competitors use?

Mr. Jacobson: Just a moment, "these points in Arizona", are you referring to railhead points?

Mr. Meinhold: Right.

[fol. 179] Mr. Jacobson: Of the Southern Pacific?

Mr. Meinhold: Correct, points specified in the application.

Mr. Jacobson: Identified on Exhibit 1?

Mr. Meinhold: That is correct, Exhibit 1. Those are the Arizona points indicated on Exhibit 1. That is correct.

By Mr. Meinhold:

Q. There is a pending question:

What mode of transportation do your competitors use?

A. Our competition is using motor transportation exclusively to all these points.

Q. What transportation agencies have you been using in the area served by your plant at Van Nuys?

A. We have been serving California points through Pacific Motor Trucking Company ever since our plant started operations in 1947 and these California points absorb approximately 75% of our total production. The other states included in our normal shipping area have been served by rail transportation.

Q. What are your intentions with respect to serving the points involved in this application from the standpoint of transportation?

A. We intend to serve these points exclusively by truck, except in emergencies.

Q. What is your understanding of the term "emergencies"?

A. It would be driveaway service.

Q. What kind of an emergency would arise whereby you [fol. 180] would use driveaway service?

A. At times when we have a chassis going to a body company for putting on a special body, which is too big to load in a boxcar, or load on any motor carrier trailer.

Q. Have you had experiences of that nature?

A. We have had some experience in that. We have had some delivered to Los Angeles.

Mr. Jacobson: May I have that answer?

(Answer read.)

Mr. Jacobson: Your question was, "Have you had experiences of that nature?"

Mr. Meinhold: Yes.

By Mr. Meinhold:

Q. You have had instances where you have used driveaway service only to points in Los Angeles, or elsewhere?



A. No elsewhere, but I know we have had a couple in Los Angeles. We haven't had any that I recall in the last six months to Arizona.

Q. But you have moved to some other points in drive-away?

A. Right. It can come up any time. We don't get too many of them. At any time we might get one.

Q. For that reason you desire that PMT have driveaway rights?

A. Yes.

Q. Why do you propose to change from rail to truck service?

A. We requested Pacific Motor Trucking Company to [fol. 181] secure necessary contract authority which would enable us to provide the same type of service as our competitors use. This is desirable for a number of reasons. If we can ship by truck, it would mean next day delivery compared to three to five days by rail. There have been times when the railroad has experienced shortages of automobile cars and has been unable to meet our requirements, thereby causing considerable delay in making delivery. This is a matter of serious concern because of our policy of only making deliveries to dealers pursuant to their orders.

Q. Were you present in the hearing room when Mr. Cron testified?

A. Yes.

Q. Did you hear his testimony concerning the general policy of Chevrolet Division of General Motors with respect to exclusive use of contract carriers at its various plants?

A. Yes.

Q. Are you familiar with that policy?

A. Yes.

Q. Was that policy correctly stated by Mr. Cron in accordance with your understanding?

A. Yes.

Q. Is Pacific Motor Trucking Company serving your plant exclusively in truckaway and driveaway service?

A. Yes.

[fol. 182] Q. Why are you not using other carriers?

A. It is not practical to have other carriers operating at our plant for the following reasons:

By referring to Exhibit No. 3, you will see that our plant is situated just north of Southern Pacific Company's coast main line. The front of the plant faces west. The plant is on the south side. There is one main driveway adjacent to the plant which is used as the receiving entrance for incoming traffic.

Q. That is designated on the map by the letter "C"?

A. That is designated by the letter "C", yes.

Q. In red pencil?

A. Yes.

Q. Go ahead.

A. Chevrolet receiving department is at the southwest corner of the plant. We have only one shipping gate. This is at the southeast corner of the plant opening into Pacific Motor Trucking Company's yard for delivery of new cars and trucks for highway transportation.

Q. Is that gate shown on the map?

A. That gate is shown by the red letter "B".

Q. Go ahead.

A. New automobiles come off of the assembly line at the rear, or east end of the plant, and are driven to the inspection square. From there they are driven into what we call [fol. 183] the OK lot, which is designated in red pencil by the letter "A". This lot is located southeast of the plant building. As orders are received, cars are pulled from the OK lot and driven to the Pacific Motor Company's gate where they are inspected by Pacific Motor Trucking Company inspectors and are then accepted after signing our delivery order. This one shipping gate opens directly into Pacific Motor Trucking Company's yard.

Q. Is there any other access to the highway?

A. The only access from this yard to the highway is through Pacific Motor Trucking Company's yard out across the Southern Pacific tracks, up a private roadway which is in gray shadow, to Van Nuys Boulevard.

Q. There is a gate to your plant at the west end, or front of the plant at the point marked "C" in red on Exhibit 3, is there not?

A. Yes. I pointed that one out before.

Q. Could not carriers enter this gate for the purpose of loading automobiles or trucks?

A. No, they couldn't, and for the reason, as I mentioned before, that is our receiving entrance for incoming traffic and it would cause considerable confusion.

The only access to the highway from this gate is through Pacific Motor Trucking Company's yard and along a private roadway to Van Nuys Boulevard. The only other gate to [fol. 184] our plant is at the west end, or front of the plant—

Q. Just a moment, please. I think your answer to the question at this point is (indicating) here. The question is this:

“Could not carriers enter this gate, that is the one marked “C” on the map, for the purpose of loading automobiles or trucks?”

A. This is our receiving or inbound entrance. Our receiving department is in the southwest corner of the plant and any attempt to move outbound and inbound shipments through the same gate would be impractical and result in congestion to the entrance to the receiving department because of the continual flow of truck loads of inbound materials. Also, it would prove very hazardous and dangerous for us to attempt to drive new automobiles up this driveway as we would be going against the normal flow of traffic. Further, in view of the fact that we have only one shipping gate, our checking and inspection operation is set up at that point, which would mean additional cost to us in checking cars out at another point. Also, the area at the rear of the plant and around the east end of this receiving driveway is continually congested with new cars, and it would be almost impossible to bring any new cars from the OK lot to this receiving driveway, because of the constant moving of cars from the repair area and the assembly line to the inspection [fol. 185] square and to the paint repair line, which is located on the south side of the receiving driveway.

Q. What other considerations, if any, account for your policy of dealing with a single carrier?

A. There are other considerations which underlie our policy of dealing with one motor carrier for the transportation of our products.

Generally speaking, our situation in this respect is similar to that covered by Mr. Cron's testimony, including the necessity for mixed shipments and split deliveries. Our whole operation is designed to provide maximum efficiency and economy in the production of cars and trucks. This is essential in a highly competitive business such as ours.

By establishing a contractual arrangement with one carrier, we avoid divided responsibility and confusion and thus receive the greatest possible assurance of completely dependable transportation. The exclusive service which Pacific Motor Trucking Company gives us is completely dedicated to the needs of Chevrolet and no other demands can be made upon it. In this respect Pacific Motor Trucking Company service differs from common carrier service. The exclusive contract permits the closest coordination of Chevrolet production and Pacific Motor Trucking transportation and permits an uninterrupted flow, with minimum storage, of automobiles and trucks to our customers.

[fol. 186] As I have indicated, Pacific Motor Trucking Company's receiving yard is immediately adjacent to our property and the normal flow of deliveries from our plant to PMT for movement beyond normally average around 45 cars per hour. To avoid backups and disruptions, it is necessary to have a highly coordinated dispatching arrangement, which PMT has provided.

The undivided responsibility which PMT assumes in this operation avoids confusion, conflict and unnecessary expense in handling this flow of traffic. The arrangement we have enables us to secure transportation on the most economical basis and still permits the operator to enjoy a fair profit.

Furthermore, the arrangement is mutually advantageous because it enables us to work closely with the carrier with respect to modernization of equipment and quantity of equipment necessary to handle our products.

Q. What is your position with respect to this application?

A. Our experience with PMT has been satisfactory in every respect and granting of the application will provide service consistent with our whole plan of operation. As I

have said, our physical and operating layout is geared to single motor carrier service and not to multiple carriers.

Q. What has been the reaction of your dealers in California who have been receiving PMT service since 1947?

Mr. Jacobson: I want to object to that as incompetent, [fol. 187] irrelevant and immaterial, and not within the issues of this case.

Mr. Meinhold: That may be stricken.

By Mr. Meinhold:

Q. Have you had any complaints from your dealers regarding PMT service in the delivery of your products?

A. We have never, to our knowledge, had any complaints regarding PMT service in the delivery of our products by our sales department or the dealers.

Mr. Meinhold: You may cross examine.

Cross examination.

By Mr. Jacobson:

Q. Have you had requests from your dealers in other states to give a truckaway service as against the rail service?

A. We have from time to time.

Q. Over what period of time?

A. Every so often.

Q. You have been competitive with truck service into Arizona for many years, haven't you?

A. That is right. I don't know how many years.

Q. For at least the last 15 years?

A. Yes.

Q. And you have been familiar, as traffic manager, with the situation with respect to the movement by truckaway carriers of motor vehicles to Arizona by truckaway service as against your rail service, have you not?

[fol. 188] A. Yes, sir.

Q. It has been over an extended period of time?

A. Yes.

Q. Haven't you, over an extended period of time, received



requests from your customers to give them the direct motor truck service?

A. No.

Q. Why are you suddenly offering them a service that they haven't requested?

A. Well, we feel that our competitors are getting that service and we believe now that we should give our dealers the same service.

Q. When did you come to that opinion?

A. I believe that has been under consideration for quite a little time.

Q. What basis have you for your statement that the rendition of the proposed service by PMT is going to give you—excuse me a minute—a more economical service and a service that will be profitable to the carrier?

A. Well, more economical service will be more economical to our dealers, for one thing.

Q. How do you know it will be more economical to your dealers?

A. Well, because the cars will be delivered right to their door.

Q. Who pays the freight?

[fol. 189] A. We pay the freight.

Q. Are you going to give the dealer the benefit of reduction in freight?

A. We don't pay the unloading cost.

Q. Have you made any comparison to determine what the amount of the saving is going to be if you get this service?

A. No, I haven't.

Q. How do you know it will be more economical to yourself, the dealers, or be profitable to the PMT?

A. Well, it costs a lot more to load automobiles than it does to ship them by truckaway.

Q. You don't reflect that saving—that saving isn't reflected in the cost to the dealer, is it?

A. No.

Q. Do you respect the wishes of the dealer with respect to their desires for a certain method of having their vehicles moved?

A. We try to.

Q. You have known for at least the past ten years, have you not, that, as a traffic manager in Los Angeles, that there are existing common carriers and contract carriers offering the service?

A. Yes.

Q. Have you ever given them any business?

A. No, we have not.

[fol. 190] Q. But still the dealers have requested it, haven't they?

A. There have been requests from time to time.

Mr. Frizzell: I would like to raise an objection. I think he has covered the territory that he is examining the witness on right now. You covered that material a while ago and this is repetition.

Mr. Jacobson: Make your objection.

Mr. Frizzell: I object.

Mr. Jacobson: This is the second witness. I have just started.

Mr. Bernstein: He will be allowed to answer.

Mr. Jacobson: Read the question.

(Question read.)

By Mr. Jacobson:

Q. Is that correct?

A. Correct.

Q. You still didn't use the existing available service of either contract or common carrier, did you?

A. We couldn't—

Q. Just answer "Yes" or "No".

Mr. Meinhold: It has been asked and asked several times.

Mr. Jacobson: If you have an objection, make it.

Mr. Meinhold: I object on that ground.

Mr. Jacobson: I want to call the Commission's attention to the fact that, through this method of canned testimony, he is incorporating the testimony of another witness that just preceded him. I should be able to go into that testimony.

Mr. Meinhold: You have already gone into it. You have asked the witness the same question a number of times.

Mr. Jacobson: I will stand on the record.

Mr. Bernstein: The objection is overruled at this time.

Mr. Jacobson: Read the question.

(Question read.)

A. No.

By Mr. Jacobson:

Q. During the past few years have you been solicited by the Robertson Truck-A-Ways, Inc., who offered their facilities from your plants to all points and places in the State of Arizona?

A. Yes. They have called me and informed me of the service they have. They informed me that if at any time we had any need for that service that they would appreciate it if we could it (sic) give it support.

Q. They give such service and can make such shipments and make split deliveries?

A. As far as I know, they do.

Q. And as traffic manager for that period of time this one of your duties to know what services are available is it not, Mr. Lilinthall?

A. Well, not in this case.

Q. In other words—

A. What is the question?

[fol. 192] Mr. Johnson: Let the witness finish his answer.

Mr. Jacobson: I will be happy to have him do so. Read the question.

(Question read.)

A. I will say, in answer to that, yes.

By Mr. Jacobson:

Q. Are you familiar with the services and facilities of B. & H. Truckaway?

A. All I know is that they operate as a contract carrier for Studebaker.

Q. Haven't they called on you many times, you and your associates, and told you about their contractual service and offered to enter into an agreement to transport your vehicles to all points and places in Arizona?

A. I have had Mr. Boner in once, that I remember, and he just explained the service, that he had service and it was available to us any time we could use it.

Q. And all of this after you had knowledge that some of your *shippers* desired truckaway service?

Mr. Johnson: Shippers?

Mr. Jacobson: I mean, some of your dealers.

A. I wouldn't say that.

By Mr. Jacobson:

Q. Haven't you had, over the period of the last three or four years haven't you had constant requests from General Motors Chevrolet dealers throughout the State of Arizona to send their vehicles in by truckaway?

[fol. 193] A. Not that I know of. I have only heard just recently that there have been.

Q. Wouldn't matters of traffic come to your attention?

A. Yes.

Mr. Meinhold: I object to the materiality of this line of questioning.

Exam. Linn: There is no pending question at the moment. Go ahead.

By Mr. Jacobson:

Q. You have heard of the Hadley Auto Transport, have you not?

A. Yes, I have.

Q. You know that they render a contractual service between Los Angeles County and all points and places in the State of Arizona?

A. Yes, I know that they are a contract carrier for Ford.

Q. Have you ever investigated to find out that they are contract carriers for others beside Ford?

A. No. We have had no reason to.

Q. Are you familiar with the facilities of the general type of equipment of those three carriers?

A. No, I am not.

Q. In other words, are you of the same opinion, or do you take the same position as your predecessor in the chair?

A. Yes.

Q. That is, that you don't care what service is offered, [fol. 194] it is PMT or else?

A. The reason for that is, I think I have stated in here, we are geared up for one contract carrier operation. The characteristics of our plant do not make it practical to bring in another carrier.

Q. Who owns the roadbed, this road, designated on the map—

Exam. Inn: Hasn't that been clearly established already?

Mr. Jacobson: I don't know whether the Southern Pacific owns it or General Motors owns it.

A. This roadway here (indicating); we don't own it.

By Mr. Jacobson:

Q. The roadway you are referring to is a roadway for ingress and egress, other than the road that brings you from this point "C" and other than the road that takes you out on PMT property?

A. Yes.

Q. Who owns that right-of-way?

A. This (indicating) road here?

Q. Yes. Isn't that Southern Pacific right-of-way?

A. Either Pacific Motor Trucking or Southern Pacific.

Q. So, other than the one road that you call your incoming road, the only ingress and egress that anybody can have is over the property of either the Southern Pacific or PMT?

A. Right.

Q. Now, you are familiar with the fact that Robertson Truck-A-Ways has hauled Chevrolets out of your plant?

[fol. 195] A. Not out of our plant.



Q. Where did they haul them from to Arizona?

A. They hauled them from our driveway out front.

Q. Did you deliver them to the driveway?

A. We delivered them to the driver.

Q. They have hauled quite a few cars, have they not?

A. We have no control over that. It is the government.

Q. Did you have any complaint about this service?

A. No. We wouldn't hear about that. That is strictly between the government and the haulaway company.

Q. Have you had any complaints about their service?

A. No.

Q. As I understand it, it is your desire, by this application, to give to your dealers the same type of service other dealers are getting in truckaway service from your plant, is that correct?

A. That is right.

Q. How are you going to ship your cars to Flagstaff, Arizona?

A. We will ship those the way they are moving now, by rail.

Q. How are you going to ship to Winslow, Arizona?

A. Winslow, Arizona, we will have them go PMT—pardon me—they will go by rail.

Q. How are you going to ship to Ajo, Arizona?

A. That will go by Pacific Motor Trucking Company if the permit is granted.

[fol. 196] Q. Is Ajo on the Southern Pacific lines?

A. I believe it is on the Southern Pacific.

Q. There are a lot of towns, and you have a lot of dealers at points and places in Arizona that are not served by Southern Pacific as rail points, haven't you?

A. There are a few.

Q. Why are you discriminating against those dealers in favor of the dealers that are on the Southern Pacific lines?

A. Well, it was our understanding that Pacific Motor Trucking Company had an agreement with the Southern Pacific that they would not get outside of Southern Pacific territory.

Mr. Jacobson: Read that answer, please.

(Answer read.)

A. (Continuing) Also, the points that are involved in this application are the volume of our shipments into Arizona. In other words, as I pointed out before, we had 4,452 units to these points the first half of this year, against 792 to the other points.

By Mr. Jacobson:

Q. You have shown 215 dealers in cities or towns in the states of Arizona, Utah, Southern Nevada and Idaho. Have you a breakdown of the dealers in each of the towns in Arizona?

A. No, I do not. I would say approximately 23 points, or 23 dealers to the points involved in this application.

Q. How many dealers have you in Wickenburg?  
[fol. 197] A. One, I believe.

Q. He isn't on the Southern Pacific, is he?

A. I don't believe so.

Q. That is the closest point to the Arizona-California border, isn't it?

A. Yes.

Q. What will he have to do to get his cars?

A. Same as he has been doing.

Q. There is available service by two contract carriers and one common carrier from your plant to the dealer in Wickenburg. Why would you discriminate against him and not give him that service?

Exam. Linn: Possibly it is a question of the invasion of territory served by one railroad by some other railroad.

A. It is our intention here very shortly, probably, or some time later, to request Pacific Motor Trucking Company to file an application for the rest of the points.

By Mr. Jacobson:

Q. Oh. How would that dovetail with—are you familiar with this arrangement between the rails that they won't invade each other's territory?

Mr. Meinhold: Just a moment. "This arrangement"—  
what do you mean by that?

Exam. Linn: No arrangement has been stated.

By Mr. Jacobson:

Q. Do you have any agreement, or any plan by which  
one rail carrier won't invade the territory of another?  
[fol. 198] A. No.

Mr. Meinhold: I object to that. That is a matter for  
the Commission's decision.

By Mr. Jacobson:

Q. You have testified that you subscribed to the state-  
ments of your witness that preceded you, that is, that it  
was the policy of Chevrolet to have plants with only one  
access, ingress and egress, so the rail carrier can get all  
the business.

What other plants do you know—

Mr. Johnson: I object to that question as being mis-  
leading—

Mr. Jacobson: I am not trying to mislead. That is the  
trouble with taking—

Mr. Johnson: Please let me state my objection.

Mr. Jacobson: I thought you had finished.

Mr. Johnson: Would you read what I said?

(Statement read.)

Mr. Johnson: —on the ground that it is based on facts  
not shown of record and, as a matter of fact, contradictory  
to the record, and argumentative.

Mr. Jacobson: These are the questions that were asked  
you and the answers given by you:

"Q. Did you hear his testimony concerning the general  
policy of Chevrolet Division of General Motors with respect  
[fol. 199] to exclusive use of contract carriers at its various  
plants?

"A. Yes.

"Q. Are you familiar with that policy?

"A. Yes.

"Q. Was that policy correctly stated by Mr. Cron in accordance with your understanding?

"A. Yes."

By Mr. Jacobson:

Q. Now my question to you is this: Did you hear Mr. Cron testify that he wasn't familiar with all the policy all over the United States?

A. Yes.

Q. Are you more familiar with the policy of Chevrolet all over the United States than he was?

A. No.

Exam. Linn: There is no basis on which we can gauge the value of that examination.

By Mr. Jacobson:

Q. Have you any agreement in Los Angeles, or in the Van Nuys plant, by which you can permit other carriers to traverse the property of PMT?

A. No.

Q. You have the main inlet gate and you say that is highly congested. All traffic comes in and goes out the same gate, doesn't it?

A. That is right.

[fol. 200] Q. In other words, the delivery trucks come in there and they deliver the merchandise and go back out?

A. Yes, but our receiving room is in the southwest corner of the plant. That is where you deliver trucks.

Q. That is the means of access that Robertson Truck-A-Ways had in making pickups?

A. That is right. As I said before, we have no control over that. We don't like it because it is inconvenient. It is also somewhat dangerous and the volume, luckily, is very very small. In the last six months we have had 194 units, which is less than half of a per cent.

Mr. Meinhold: Of what?

The Witness: Of our entire production.

A. (Continuing) Also, every time we do have to deliver the cars out that front gate it means that it breaks up

our operation out in the back and delays us in releasing cars back there; either that, or we have to pull a man from some place else, also take a patrolman away from a post in the receiving department.

By Mr. Jacobson:

Q. As traffic manager of the Los Angeles Chevrolet plant, is your position the same as evidenced by the witness from Oakland, that you want the service of PMT, or else you are going to retain it on rail?

A. We want the service of PMT.

Q. Assuming that this application should be pending [fol. 201] for the next six months, just an assumption—let us take another assumption.

Assume that the Commission should see fit to deny this grant of authority, are you going to continue to ship by rail, or are you going to use other means of transportation?

A. We will continue to ship by rail.

Q. Notwithstanding the fact that there are existing facilities available?

A. Well, we can't use them because our plant characteristics will not permit any volume to go out the receiving gate.

Q. You mean because PMT and the Southern Pacific control the property around you, is that it?

A. Not necessarily that.

Q. What else is there?

A. Well, because we are using PMT, and their service has been good, and we want them to continue with the new territory, or handle new territory.

Q. If the shippers, as you say, are demanding a competitive, well, if the dealers are demanding a competitive service to their competitors', wouldn't it be your policy to modify your procedure and give them that service?

Mr. Johnson: For the sake of clarity, I don't think you mean to use the word "shippers"?

Mr. Jacobson: I changed it.

Read the question.



[fol. 202] (Question read.)

Mr. Bernstein: I think we know the answer to that. There is no need to go into that further.

By Mr. Jacobson:

Q. Do any dealers pick up automobiles at your place?

A. No.

Q. You don't have any drive-out business there at all?

A. No.

Q. In other words, a dealer has to take it through PMT, is that correct?

A. We deliver them through PMT.

Q. Every vehicle that comes off of the line is delivered to a PMT man at the gate, is that correct?

A. Not every one.

Q. Which ones aren't?

A. The ones we ship by rail.

Q. Other than those that go by rail, Southern Pacific, they are all delivered to the PMT yard; is that correct?

A. That is right, except the ones the government comes in for.

Q. Now, the trucks that serve you for PMT are the same trucks that serve the other General Motors plant, they interchange them, and they are the ones that serve the General Motors plant at Southgate, are they not?

A. Yes, they do.

Q. And you have seen trucks in there, have you not, that [fol. 203] are leased from other carriers?

A. One time, yes.

Q. Only on one occasion?

A. One occasion is all that I know of.

Q. Do you know that during the past year there have been many, many instances—

Mr. Frizzell: I object.

Mr. Jacobson: Wait until I finish the question.

Mr. Frizzell: It is objectionable as far as you have gone.

Mr. Jacobson: Do you want to object now, or wait until I finish?

Exam. Linn: Finish your question.

Mr. Jacobson: Will you read the question as far as I went?

(Question read.)

Mr. Jacobson: I will withdraw the question.

By Mr. Jacobson:

Q. As traffic manager, do I understand that you only know of one instance where leased equipment came in?

A. Yes.

Q. Have you ever, as traffic manager, had the occasion to look at the facilities of Hadley Auto Transport, Robertson Truck-A-Ways or B & H?

A. No.

Q. You weren't interested?

A. I had no reason to be.

Q. Assuming that it takes four months for this matter [fol. 204] to be decided, during that period of time are you going to avail yourself of the facilities of existing carriers to meet your dealers' demands?

A. No.

Q. May I ask one other question. Do you consider contemplating asking—strike that.

Do you know what the Santa Fe Transportation Company is?

A. No.

Q. Didn't you know that is a subsidiary, a truck subsidiary of the Santa Fe Railroad?

A. Yes.

Q. Do you contemplate asking the Santa Fe Transportation Company to seek a certificate to serve the points on the lines of the Santa Fe in Northern Arizona so—

A. No.

Q. Let me finish the question—so that the dealers in Northern Arizona can get the same expeditious service as the dealers in Southern Arizona?

A. No.

Q. So if PMT should secure these rights only those dealers that are on their lines will enjoy the benefits of them?

A. Right now, yes. As I stated before,—

Exam. Linn: You have answered the question.

Mr. Jacobson: I believe that is all.

Exam. Linn: Any redirect?

[fol. 205] Redirect examination.

By Mr. Meinhold:

Q. Mr. Lilinthall, I believe you testified that during the first six months of 1956 you shipped approximately 4,452 units to the points involved in this application?

A. That is right.

Q. Do you know the number of units that were shipped during that period to other points in Arizona?

A. Yes, 792.

Q. 792?

A. That is right.

Q. I think you testified that there were 23 dealers located at the points involved in this application?

A. That is right, approximately 23.

Q. And I don't know whether you said that you know how many dealers were situated at the other points in Arizona. Do you know?

A. Something, I would say, like 20 or 21.

Q. At the other points?

A. Yes.

Mr. Meinhold: That is all.

Recross examination.

By Mr. Jacobson:

Q. You said there are 22 dealers that are on rail?

A. Approximately 22.

Q. Would you take my word for it if I said there are [fol. 206] 14 large towns not on rails of the Southern Pacific?

A. 14 is right. I said 20 or 21.

Redirect examination.

By Mr. Meinhold:

Q. Mr. Jacobson I believe mentioned cities or towns; my question was with respect to dealers. Are you talking about 14 dealers, or 14 cities or towns?

A. I believe it is 14 dealers.

Q. Located off these points?

A. Right.

Mr. Jacobson: Just a moment.

Exam. Linn: Let us be clear about that. Does this figure of something like 4,500 cars in the first six months of 1956 refer to cars delivered to 23 dealers in Arizona?

The Witness: That is right.

Exam. Linn: And how many points in Arizona were these deliveries made?

The Witness: Other than the Southern Pacific points? I didn't get the question.

Exam. Linn: You made deliveries in the first half of 1956 to 23 dealers. Is each one of those dealers located in a different point?

The Witness: Well, in Phoenix there are three, in Tucson two, and the rest are all one dealer.

Recross examination.

By Mr. Jacobson:

Q. It isn't clear to me. How many dealers are located [fol. 207] outside of the points by the Southern Pacific, if you know? You said 14 before.

A. That is right.

Q. There are 23 on the line and 14 off the line, is that correct?

A. I don't know if that is correct. I am not sure. I know there are 23 points on the line.

Q. And of those 23, three and two of those 23 are in Tucson and Phoenix?

A. Correction there. I am wrong. It is three dealers in Phoenix and one at Tucson, and the rest of the points have one.

Q. So almost half of the dealers are off the line, and a little more than half on the line?

A. Right.

Mr. Jacobson: That is all.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

You are excused.

(Witness excused.)

[fol. 208] DAVID M. LEE being previously sworn, testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name and address?

A. David M. Lee, Los Angeles, California.

Q. What is your business address?

[fol. 209] A. 7101 East Slausson.

Q. By whom are you employed; other than Dallas & Mavis?

A. Robertson Truck-A-Ways, Inc.

Q. In what capacity?

A. Vice-president and General Manager.

Q. Where is their principal place of business?

A. Los Angeles, California.

Q. At what location?

A. 7101 East Slausson Avenue.

Q. You say the principal place of business is 7101 East Slausson Avenue?

A. Yes, sir.

Q. At that location what facilities and what properties does Robertson Truck-A-Ways have?

A. We have an office, completely modern, eight acres of improved land fenced and lighted. Also garage facilities,



fueling facilities, and any necessary equipment it takes to operate our truck transport business.

Q. Is all of that property owned by Robertson Truck-A-Ways?

A. Yes, it is.

Q. Robertson Truck-A-Ways has authority from the Interstate Commerce Commission, under Docket MC-109772, to serve points and places in Arizona from the Raymer plant?

A. Yes, sir.

Q. Does your company render a service between points [fol. 210] and places in Los Angeles and points and places in Arizona?

A. Yes, we do.

Q. How extensive in Arizona?

A. We have all points and places in Arizona.

Q. Now, how frequently do you have vehicles in Arizona?

A. Every day.

Q. Who is your principal company, or what is the principal company for whom you transport motor vehicles?

A. Chrysler Corporation.

Q. As a common carrier do you transport motor vehicles for anybody that seeks your service?

A. Yes, we do.

Q. What facilities, or what office facilities, or facilities of any kind, do you have in Arizona?

A. We maintain an office, management yard, improved yard, lighted and fenced, for handling any of the traffic that goes through, stops off, or en route, along with filling station facilities.

Q. Does your company engage exclusively in the transportation of motor vehicles by truckaway and driveaway?

A. Yes.

Q. Approximately how many trucks and trailers does your company operate at the present time?

A. We have about 105 trucks and about 112 trailers, well, 110 or 115 trailers.

[fol. 211] Q. And is all of that equipment available for the transportation of motor vehicles?

A. Yes.

Q. What is the situation with respect to the volume of

business you are enjoying in comparison to the volume of equipment you have at the present time?

A. Very little right now. 25 per cent of our equipment is in use.

Q. And 75 per cent is idle?

A. Yes.

Q. Are you seeking, is your company seeking business between all of the points that you are authorized to serve, including the Arizona territory?

A. Yes, we are.

Q. Are you actively soliciting that business?

A. Yes.

Q. Has your company made their services known to the Chevrolet plant at Raymer?

A. Yes.

Q. Have you solicited that business?

A. Yes, we have.

Q. Personally?

A. Personally.

Q. And through your people in the office?

A. Yes, sir.

[fol. 212] Q. Over what period of time?

A. Oh, for the past 18 months.

Q. Do you know Mr. Lilinthall, who was a witness here?

A. Yes.

Q. Did you ever meet him?

A. Yes.

Q. Have you delivered to them copies of your rights and tariff?

A. Yes.

Q. Have you solicited their business to all dealers in Arizona?

A. Yes, we have.

Q. Have you ever received any business from him direct?

A. No, sir.

Q. Have you ever transported any motor vehicles, any Chevrolet automobiles out of the plant at Raymer?

A. Yes, we have handled some.

Q. Approximately how many, and over what period of time?

A. I think the last year we probably handled 25 or 30.

Q. Do you have any difficulty getting them out?

A. No, we had no difficulty.

Q. Have you had any complaints about the service?

A. We have had no complaints.

Q. To what points in Arizona do you deliver the Chevrolet?

A. I think there is an exhibit there. I don't recall the points.

[fol. 213] Q. I show you what purports to be a two-page document and I will ask if that was prepared under your supervision and direction?

A. Yes, it was.

Q. What does it show?

A. It shows a listing of Chevrolet units handled by Robertson Truck-A-Ways to various points, including the State of Arizona.

Q. All of these were received by your company as a common carrier out of the Raymer plant at Van Nuys?

A. Yes.

Q. And delivered to destinations?

A. Yes, they were.

Q. Were you able to get them without going over the property of PMT?

A. Yes. As I recall, they did not go over the PMT property.

Q. Did you have any difficulty in getting these shipments out of the plant at Raymer for delivery?

A. No. Arrangements were made for us to get the vehicles.

Q. Arrangements were made for you to get the vehicles?

A. Yes.

Q. Did you encounter any difficulty in getting the vehicles?

A. None.

Q. Did you have any complaint from anybody as to the service you rendered to Arizona on those vehicles you delivered?

[fol. 214] A. No.

Q. Does your company, under its tariff on file, provide for split deliveries?

A. Yes.

Q. And off-main highway deliveries?

A. Yes.

Q. Are you in a position to render a service to all points and places in the State of Arizona from the Raymer plant?

A. Yes.

Mr. Johnson: I object to that as calling for a conclusion of the witness and self-serving.

Mr. Bernstein: I think he can answer.

A. We are authorized to serve all points in the State of Arizona.

By Mr. Jacobson:

Q. Would you accept the business of the Chevrolet Company for transportation to Arizona if tendered to you?

A. Yes, indeed, we would.

Q. Have you the available facilities to render such service?

A. I think we have, yes.

Q. If additional equipment is required would you put on that additional equipment?

A. We would be very happy to.

Q. At the factories with whom you do business do you receive the vehicles at the gate and are they checked in by [fol. 215] your company?

A. Yes.

Q. And inspected?

A. Yes.

Q. Are you familiar with the method used by PMT in accepting automobiles from the General Motors?

A. Only what I have heard today at this hearing.

Q. As a matter of fact, you have transported motor vehicles for General Motors out of Southgate, haven't you?

A. Yes.

Q. To points and places in Arizona?

A. Yes, sir.

Q. On more than one occasion?

A. I believe, so, yes.

Q. Have you ever had any complaints from General Motors as to the service given out of the Southgate plant?

A. No, we have not.

Q. Whose property did you receive the cars on from the General Motors plant in Southgate?

Mr. Meinhold: Just a moment. I believe the testimony of the witnesses related only to the Chevrolet Division of General Motors.

Mr. Jacobson: General Motors is a plant. If we are rendering service as a common carrier to General Motors, I think the Commission would like to be advised of it.

[fol. 216] Mr. Meinhold: I object to any testimony with respect to a movement from Southgate.

Mr. Bernstein: Sustained.

By Mr. Jacobson:

Q. Have you ever had any complaints from General Motors as to any products you have transported for them?

Mr. Frizzell: I raise an objection to that question. I think we should first establish if he has transported anything for General Motors, and then you can ask that question.

Mr. Jacobson: That isn't the question I asked.

Mr. Frizzell: Read the question.

(Question read.)

Mr. Frizzell: That assumes he has transported for General Motors. That question assumes that fact. So I say the question is improper.

Mr. Jacobson: I will reframe the question.

By Mr. Jacobson:

Q. Have you ever had any complaint from General Motors with respect to any General Motors product you have transported?

Mr. Frizzell: I object.

Mr. Jacobson: I will submit that for a ruling.

Mr. Bernstein: I think he already testified he hauled for General Motors.

Mr. Frizzell: I didn't hear it.



**Mr. Bernstein:** He has an exhibit here that purports to list the hauls from the Van Nuys plant for Chevrolet.

[fol. 217] **Mr. Frizzell:** I don't think there is any testimony that those were General Motors shipments.

**Mr. Jacobson:** Do you dispute that Chevrolet is General Motors?

**Mr. Frizzell:** Not at all. The question is whether or not these are General Motors shipments.

**Mr. Bernstein:** I think there ought to be a foundation laid.

**Exam. Linn:** So the record may not get too indefinite, the operating authority of Dallas & Mavis Forwarding Co., Inc., will be marked as Exhibit No. 8 for identification.

(Protestant's Exhibit No. 8, Witness Lee, was marked for identification.)

**Exam. Linn:** The operating authority of Robertson Truck-A-Ways, Inc., will be marked as Exhibit No. 9 for identification.

(Protestant's Exhibit No. 9, Witness Lee, was marked for identification.)

**Exam. Linn:** The two-page document, headed in part, "Chevrolets out of the Van Nuys plant", will be marked Exhibit No. 10 for identification.

(Protestant's Exhibit No. 10, Witness Lee, was marked for identification.)

#### OFFERS IN EVIDENCE

**Mr. Jacobson:** I offer them at this time.

**Mr. Bernstein:** Those exhibits will be admitted.

[fol. 218] (Protestant's Exhibits Nos. 8, 9, and 10, Witness Lee, were received in evidence.)

**Mr. Jacobson:** That is all.

## Cross examination:

By Mr. Meinhold:

Q. Will you point out on Exhibit 9 wherein you claim authority to transport automobiles from Raymer?

A. Yes. "New automobiles and new trucks, in initial movements, from Maywood, California", as a point, which gives us, under the commercial zoning, a three-mile link, which takes us into the commercial zone of Los Angeles; Van Nuys being in Los Angeles.

Q. Is Van Nuys a separately incorporated community?

A. No, it is not, as I understand it.

Q. Do you regard the provision here with respect to points and places within one mile of Maywood as a limitation?

A. Not on the Maywood, California, authority, no. That is the same as if you listed additional points along with Maywood, California.

Q. What is the approximate distance of Raymer from Maywood?

A. The miles?

Q. Yes.

A. I really don't know.

Q. With reference to Exhibit No. 10, did all of these cars move in driveaway service?

A. No. They were all in truckaway service.

[fol. 219] Q. I notice on several occasions just one vehicle moved on certain days. Did you move that single unit on one piece of equipment?

A. That is likely the date that we received the vehicle.

Q. So that it doesn't mean that you may have moved only one?

A. It doesn't mean it was shipped that day as one vehicle on one truck. Likely it was consigned with other vehicles for a load.

Q. For whom were these shipments made?

A. For whom were they made?

Q. Yes.

A. The government paid the freight.

Q. Who ordered you to pick up the shipments?

A. Someone of the General Services Administration.

Q. The government?

A. Yes.

Q. You are transporting at the present time for the Chrysler Corporation?

A. Yes. We are a common carrier. We transport for anyone.

Q. For whom are you transporting from Los Angeles automobiles and trucks in initial movements?

A. We do that for the Chrysler Corporation.

Q. The Chrysler Corporation only, is that correct?

A. I think this Exhibit No. 10 would be initial movement. That would have to be for the government, would be Chev- [fol. 220] rolet cars.

Q. Excluding government shipments, would all of your shipments have been exclusively for Chrysler?

A. I don't recall, but most likely the majority would be.

Q. You don't recall any other shippers?

A. Well, I don't know. I think we have moved a Studebaker or two from the Studebaker plant, but our volume is with the Chrysler Corporation.

Q. And you offer the Chrysler Corporation truckaway and driveaway service?

A. Yes.

Q. I understood you to say that you had a surplus of equipment at the present time?

A. Yes, we do.

Q. Did you indicate the volume of the movement for the first six months of this year, or would you, if you could?

A. I think we could. We have an exhibit here for the Arizona points.

Q. Your total?

A. I don't believe I have the total.

Q. Do you know what it was for last year, 1955?

Mr. Jacobson: Just into Arizona?

Mr. Meinhold: No, the total.

A. The total number of vehicles?

By Mr. Meinhold:

Q. The total volume moved by you, total number of vehicles [fol. 221] hicles moved by you.

A. I couldn't give you that from memory, no.

Q. But it was greater last year, was it not, than it has been for this year for a corresponding period?

A. I would say probably it was a little greater, yes.

Q. Just a little greater last year than this year?

A. Yes.

Q. Your answer is "Yes"?

A. Yes.

Q. Do you own your own equipment?

A. Yes.

Q. Do you lease any equipment?

A. Yes, we lease a few power units.

Q. To what extent do you lease units, that is, what percentage of your movement is in leased vehicles?

A. We own all of our trailer equipment.

Q. I should have said "power units".

A. The power equipment would run perhaps, oh, maybe 18 or 20 per cent.

Q. Are those power units owner-operated units, the ones that you lease?

A. Are they what?

Q. Owner-operated.

A. We just lease the equipment. We put the driver on.

Q. You employ your regularly employed drivers to operate [fol. 222] ate those units?

A. Yes. They are regular employees.

Q. What is the relationship between Dallas & Mavis and Robertson Truck-A-Ways, if any?

A. Dallas & Mavis Forwarding Co. owns all of the stock of Robertson Truck-A-Ways.

Mr. Meinhold: That is all.

Mr. Jacobson: One other question.

## Redirect examination.

By Mr. Jacobson:

Q. Did you ever have occasion to move any shipments to Arizona in initial movement from General Motors?

A. Yes, we have.

Q. From where?

A. Southgate.

Q. How recently was that?

A. I think the last movement was within the last ten days or two weeks.

Q. Was that on a government bill of lading or for General Motors?

A. That was for General Motors.

Q. On the government shipments referred to on the exhibit, who called you to tell you when and where you could get the cars released?

A. That information would come from the Chevrolet plant.

Q. Would your company be willing to enter into any [fol. 223] reasonable agreement with the Southern Pacific or PMT to utilize their facilities in order to give the needed service to Chevrolet at Raymer?

Mr. Johnson: I object to the question as leading and highly suggestive.

Mr. Jacobson: That is the only way I can ask it.

Exam. Linn: It is probably a condition that the Commission could not rely upon in handling this application.

Mr. Jacobson: That is all.

## Recross examination.

By Mr. Meinhold:

Q. You stated that you had moved some units for General Motors from the Southgate plant?

A. Yes, there has been a movement.

Q. Pardon?

A. Yes.

Q. What were the circumstances in connection with those movements?



A. What were the circumstances?

Q. Yes. Were you requested by General Motors to move those units?

A. Yes. We wouldn't have moved them without their request.

Q. How many units did you move?

A. I think the last shipment was four vehicles, three or four.

Q. The last shipment?

A. Yes.

[fol. 224] Q. When was that?

A. I think it was in the last couple of weeks.

Q. When did you move units from General Motors plant at Southgate before that?

A. I can't give you any date.

Q. Can you give us an approximate date?

A. Well, yes. I would say within the last two years.

Q. Were those movements made on a bill of lading executed by General Motors Corporation?

A. Yes. Any cars we move from there would go on General Motors bill of lading.

Q. Were those movements made in truckaway service?

A. Yes.

Q. That movement of four units was made in truckaway service?

A. Yes, sir.

Mr. Meinhold: That is all.

Mr. Jacobson: That is all.

(Witness excused.)

Mr. Jacobson: I will call Mr. Hadley.

D. P. HADLEY was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q: State your name, please.

A. D. P. Hadley.

Q: Where do you reside?

[fol. 225] A. Newport Beach, California.

Q: What is your business or occupation?

A. Transportation of motor vehicles.

Q: The Hadley Auto Transport is a corporation?

A. Yes.

Q: What is your position with the corporation?

A. President.

Q: As such, you are familiar with the entire operation of the company?

A. I am.

Q: At what point does your company maintain facilities, Mr. Hadley?

A. Long Beach, California.

Q: At that location what do you have?

A. We have ten acres, paved and fenced yard, with complete shops, and offices, and all facilities necessary to operate.

Q: At what other location do you have facilities?

A. At Milpitas, California.

Q: At that location what do you have?

A. We have nine acres, most of which is paved, and all fenced, with shops and offices, and a fuel supply, and all facilities necessary for the operation.

Q: Do you maintain facilities at any point in Arizona?

A. We have a terminal, relay station and terminal at Wickenburg, Arizona.

[fol. 226] Q: Do you also maintain facilities at Phoenix, Arizona?

A. No.

Q: You have facilities at Wickenburg?

A. Yes.

Q. I will show you one three or four-page document, entitled "Permit No. MC-112391, Hadley Auto Transport", and ask you if that is the permit now held by Hadley Auto Transport Company?

A. It is.

Q. It authorizes the transportation of automobiles, trucks, and so forth, between those plants and places in Los Angeles in initial movement by truckaway to all points and places in the State of Arizona?

A. Yes.

Q. Are you conducting such a service?

A. Yes, regularly.

Q. With what degree of regularity?

A. Well, we operate every day, from eight to ten hours a day, in the State of Arizona.

Q. Do you cover the entire State of Arizona?

A. Yes.

Q. What cars do you principally haul?

A. Ford and Mercury.

Q. Under contract arrangement?

A. Yes.

[fol. 227] Q. Do you have any contract with any other builder of automobiles in the Los Angeles area?

A. We have a contract with Ford, Mercury Division, and Nash, and the Packard Motor Company.

Q. Are you familiar with the Chevrolet plant at Raymer?

A. Yes.

Q. Are you familiar with the fact that they move automobiles and trucks to points and places in Arizona?

A. Yes.

Q. Would you transport their vehicles to all points and places in Arizona covered by your authority?

A. We would.

Q. How many units of equipment does your company own and operate at the present time?

A. 134.

Q. Are those all owned or leased?

A. 24 are leased.

Q. Are those trucks and trailers particularly adaptable to the transportation of motor vehicles?

A. Yes.

**Q.** Approximately how many vehicles do you move into Arizona monthly?

**A.** About 900.

**Q.** Are all the points that you serve on the railroad of the Southern Pacific?

[fol. 228] **A.** Into Arizona?

**Q.** Yes.

**A.** No.

**Q.** Does your company render service to dealers along the northern route, which is the Santa Fe Route?

**A.** Yes.

**Q.** You also render service to points outside the municipalities in the various communities in the State of Arizona?

**A.** Yes.

**Q.** In fact, do you offer a service to all dealers in the State of Arizona?

**A.** Yes.

**Q.** Have you available facilities to transport additional units of equipment between Los Angeles County and Arizona?

**A.** Yes, sir.

**Q.** And if General Motors, Chevrolet Division at Raymer, were agreeable to entering into a contract with you for the transportation of their vehicles to all or any portion of Arizona, would you entertain such a proposal?

**A.** Yes.

**Q.** And you have the facilities to render such a service?

**A.** We do.

**Q.** Did I ask you, is your equipment fully occupied at the present time?

**A.** No.

[fol. 229] **Q.** Could you handle additional business with the equipment you have?

**A.** Yes.

**Q.** Have you the financial ability to acquire additional equipment if necessary?

**A.** We do.

**Mr. Jacobson:** That is all.

Cross examination.

By Mr. Meinhold:

Q. Mr. Hadley, will you please point out in your certificate wherein you claim to have authority to transport automobiles and trucks from Raymer to points in Arizona?

A. The first paragraph on page 2, "from points other than Long Beach in Los Angeles County, to points in Arizona, Nevada, New Mexico, and Utah, with no transportation for compensation on return except as otherwise authorized."

Q. Thank you. Where is the Ford plant situated in the vicinity of Los Angeles?

A. Long Beach.

Q. Where is your Mercury plant situated?

A. Los Angeles.

Q. And Nash?

A. El Segundo.

Q. And Packard?

A. Packard moved out in a secondary movement, came [fol. 230] from the east out.

Q. So your initial movements are for Ford, Mercury and Nash?

A. Yes.

Q. Do you have facilities adjacent to the Ford plant at Long Beach?

A. No, we do not.

Q. Do you at Milpitas?

A. We have a terminal in Milpitas, but not adjacent to the Ford property.

Q. How far away is it?

A. A mile.

Q. Is Nash presently assembling automobiles at El Segundo?

A. No.

Q. How long since it has been?

A. Some time in the latter part of 1955.

Q. Are the units that are leased operated by the owners?

A. Yes. We own the trailers. They own the power units and we own the trailers.



Mr. Meinhold: That is all.

Mr. Bernstein: That is all. You are excused.

(Witness excused.)

Mr. Bernstein: Mr. Jacobson, do you want this document in as an exhibit?

#### OFFERS IN EVIDENCE

Mr. Jacobson: Yes. I would like to offer it as the next number in order.

[fol. 231] Mr. Bernstein: This document, entitled "Permit, No. MC-112391, Hadley Auto Transport, a corporation, Long Beach, California", will be marked as Exhibit No. 11.

The one-page document entitled, "Between 600 and 800 automobiles and trucks hauled from Los Angeles County to following points in Arizona each month", will be marked as Exhibit No. 12.

These documents may both be received in evidence.

(Protestant's Exhibits Nos. 11 and 12, Witness Hadley, were received in evidence.)

Mr. Jacobson: I will call Mr. Boner.

JAMES D. BONER was sworn and testified as follows:

#### Direct examination.

By Mr. Jacobson:

Q. State your name.

A. James D. Boner—B-o-n-e-r.

Q. Where do you reside, Mr. Boner?

A. San Gabriel, California.

Q. What is your business or occupation?

A. Partner in B. & H. Truckaway Company, which is located in Maywood, California, and we are in the business of transporting automobiles and motor vehicles.

Q. I show you a two-page document entitled, "Permit, No. MC-107230", and ask you if that is the permit under which your company is authorized to transport motor ve-

[fol. 232] hicles between the Raymer plant and all points and places in the State of Arizona?

A. It is.

Q. How many units of equipment does your company have at the present time?

A. We have 22 trucks and 21 trailers.

Q. And you have authority to transport in initial movement to all points and places in the State of Arizona?

A. Yes.

Q. At the present time what is the condition of your operation?

A. We are operating four trucks and trailers at the present time for lack of business.

Q. Who is your principal customer?

A. The Studebaker-Packard Corporation.

Q. Are they assembling in the Los Angeles area at the present time?

A. No. They ceased operation of assembling 30 days ago.

Q. Have you ever called to the attention of the traffic department of the Chevrolet plant the authority and facilities you have?

A. I have.

Q. Have you offered to enter into a contract for the transportation of their motor vehicles from Raymer to all points and places in the State of Arizona?

A. Yes, I have.

Q. On how many occasions have you called that to their [fol. 233] attention?

A. I called on Mr. Lilinthall about six years ago, and then in the last 60 days I called on him again.

Q. Are you ready, able and willing to render such service?

A. Yes.

Q. Have you the facilities to do so?

A. Yes.

Q. Do you need business at the present time?

A. Yes.

Mr. Jacobson: That is all.

Cross examination.

By Mr. Meinhold:

Q. Do you still have a contract with Studebaker-Packard?

A. Yes, I have.

Mr. Meinhold: That is all.

Mr. Bernstein: Do you want this document in evidence?

Mr. Jacobson: Yes.

Mr. Bernstein: This two-page document, entitled, "Permit; No. MC-107230", may be admitted in evidence as Exhibit No. 13.

(Protestant's Exhibit No. 13, Witness Boner, was received in evidence.)

[fol. 234]

## PROTESTANTS' EXHIBIT 10

REPRESENTATIVE LIST OF SHIPMENTS BY ROBERTSON TRUCK-A-WAYS, INC., LOS ANGELES, CALIFORNIA FROM CHEVROLET VAN NUYS PLANT, VAN NUYS, CALIFORNIA

[fol. 235] ROBERTSON TRUCK-A-WAYS, INC.

CHEVROLETS OUT OF VAN NUYS PLANT,  
VAN NUYS, CALIFORNIA

<i>No. Cars</i>	<i>Date</i>	<i>Destination</i>
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	Boulder City, Nevada
1	1-5-56	Phoenix, Arizona
1	1-5-56	Las Vegas, Nevada
1	1-5-56	Florence, Arizona
1	2-2-56	Holbrook, Arizona
1	2-7-56	Boulder City, Nevada
1	2-7-56	Sacaton, Arizona
1	2-13-56	Coolidge, Arizona
1	2-21-56	Flagstaff, Arizona
1	2-24-56	Phoenix, Arizona
1	2-24-56	Phoenix, Arizona
1	2-27-56	Parker, Arizona
1	2-28-56	Parker, Arizona
1	2-28-56	Tucson, Arizona
1	3-5-56	White River, Arizona
1	3-5-56	Tucson, Arizona
1	3-5-56	Tucson, Arizona
1	3-8-56	White River, Arizona
1	3-16-56	Phoenix, Arizona
1	3-18-56	Nogales, Arizona
1	3-23-56	Ogden, Utah
1	3-23-56	Ogden, Utah
1	5-9-56	Phoenix, Arizona
1	6-26-56	Boulder City, Nevada

[fol. 236]

PROTESTANTS' EXHIBIT No. 12

BETWEEN 600 AND 800 AUTOMOBILES AND TRUCKS HAULED FROM LOS ANGELES COUNTY TO FOLLOWING POINTS IN ARIZONA EACH MONTH:

✓ AJO	MESA
BENSON	NOGALES
✓ BISBEE	✓ PARKER
BUCKEYE	PHOENIX
CASA GRANDE	✓ PRESCOTT
CHANDLER	SAFFORD
CLIFTON	SAN MANUEL
COOLIDGE	✓ ST. JOHN
✓ COTTONWOOD	✓ SPRINGVILLE
DOUGLAS	TUCSON
DUNCAN	✓ WICKENBURG
FLAGSTAFF	WILLCOX
✓ GLENDALE	✓ WILLIAMS
GILA BEND	✓ WINKELMAN
GLOBE	✓ WINSLOW
✓ HOLBROOK	YUMA
✓ KINGMAN	

FACILITIES LOCATED IN LOS ANGELES COUNTY AND ARIZONA:

GENERAL OFFICE, DISPATCH OFFICE AND SHOP LOCATED AT 21732 SO. SANTA FE AVE., LONG BEACH

STORAGE YARD LOCATED AT 700 HENRY FORD AVE., LONG BEACH

STORAGE YARD LOCATED AT 5565 E. SLAUSON AVE., LOS ANGELES

DRIVER RELAY STATION LOCATED AT WICKENBURG, ARIZONA

NO RECORD OF ANY TRAFFIC MOVING FOR GENERAL MOTORS

Check marks handwritten.



[fol. 239]

**Plaintiff's Exhibit 3****BEFORE THE INTERSTATE COMMERCE COMMISSION****DOCKET No. MC-78787 (Sub 37)**

[Title omitted]

**Transcript of Hearing—February 20, 1957**

226 Old Mint Building,  
Fifth and Mission Streets,  
San Francisco, California.

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

F. ROY LINN, Examiner.

. . . . .

[fol. 240] R. K. BOOTH was sworn and testified as follows:

. . . . .

[fol. 241] Exam. Linn: Very well, will you indicate the order in which the exhibits should be numbered, beginning with the Exhibit No. 1?

Mr. Johnson: Exhibit 1 is the report of decision of the Interstate Commerce Commission describing operations of Pacific Motor Trucking Company.

Exhibit 2 is a copy of permits and recommended reports and so forth, issued to PMT in connection with its contract carrier operations.

Exhibit 3 is a map exhibit.

Exhibit 4 is a drawing of the Oakland Chevrolet Plant No. 1 and Southern Pacific Company's and Pacific Motor Truck Company's transportation facilities.

Exhibits Nos. 5 and 6 are aerial photographs of the Oakland plant of the Chevrolet Division of General Motors.

Exhibit 7 consists of six photographs of PMT equipment.

Exhibit No. 8 is a document entitled "Pacific Motor Trucking Company Truckaway Transit Time (Days) To [fol. 242] Points In States Proposed To Be Served From General Motors Corporation Plants In California."

Exhibit 9 is a drawing of the Raymer Chevrolet plant.

Exhibits 10 and 11 are aerial photographs of the Chevrolet Raymer plant.

Exhibit 12 is a drawing of the South Gate General Motors Corporation plant, and so forth.

Exhibits 13 and 14 are aerial photographs of the South Gate Chevrolet plant.

Exam. Linn: These several exhibits may be marked for identification.

(Applicant's Exhibits Nos. 1 to 14, inclusive, Witness Booth, were marked for identification.)

Direct examination.

By Mr. Johnson:

Q. Will you proceed with your statement, Mr. Booth?

A. My name is R. K. Booth and my business address is 110 Market Street, San Francisco 5, California.

I have been employed by Pacific Motor Trucking Company since January, 1935, in various capacities, including Manager of Equipment, District Manager, Assistant to the Vice President, General Manager, and Vice President. In my position as Vice President, which I have held since October, 1954, I am directly in charge of all of Company's operations and report directly to its President.

[fol. 243] The pending application Docket No. MC-78787, Sub. 37, was filed at the request of General Motors so as to make PMT's contract carrier service available to these assembly plants with respect to the balance of their respective distribution territories. In other words, this extension involves service to present and prospective dealer locations not covered by authority previously granted to or sought by PMT.

In the interest of clarity, I will discuss the application more specifically as it relates to each of the assembly plants. Before doing so, however, I should refer to an exhibit which has general application. At our request, we have been furnished by General Motors with a designation of the points involved in the pending application where it presently has a Chevrolet or Buick-Pontiac-Oldsmobile dealer or dealers. On the basis of this information, I have had a map prepared on which each of these points has been indicated by a green circle and the sources of supply shown by the references M, R, and S representing the Melrose, Raymer, and South Gate plants, respectively. This map has been marked for identification Exhibit 3.

General Motors owns two assembly plants in the city of Oakland, California. Plant 1, commonly known as the [fol. 244] Melrose plant, was located on the rail line of the Southern Pacific Company and placed in operation in 1914. Its assembly operations are confined to Chevrolet automobiles. Plant 2 situated about three and one-half miles from the Melrose plant, was opened in 1920 and is also served by the Southern Pacific. It assembles trucks for the Chevrolet Motor Division and for GMC Truck Division, these products being separately identified and distributed by the respective divisions as Chevrolet and GMC trucks.

The application in this proceeding asks authority to transport in interstate or foreign commerce, new automobiles, trucks and buses, except trailers, in initial movements, in truckaway or driveaway service, over irregular routes from the sites of General Motors-Chevrolet plants in Oakland, California, to all points and places in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except to points and places in Oregon and Nevada which are stations on the rail lines of the Southern Pacific Company and Carson City, Hawthorne, Minden, Austin, Tonopah, and Yerington, Nevada.

As I have previously stated this application contemplates an extension of operations which were initiated by PMT's predecessor in 1929. The operations acquired by PMT in 1935 embraced a radial distribution area of approximately 75 miles, including movements, in interstate or foreign commerce, to docks in Oakland, Alameda and San Francisco.

[fol. 245] While PMT sought "grandfather" rights for these operations, the Commission in PACIFIC MOTOR TRUCKING CO., common carrier application, 34 M.C.C. 249, 295-96, held them exempt under Section 203 (b)(8) and they have been continued under this authority. The original intrastate operations, as well as those established subsequently have been conducted under Contract Carrier Permit No. 38-570 issued by the California Public Utilities Commission in 1935. A copy of this permit which authorizes operations throughout the state is reproduced on the last page of my Exhibit 2. These original operations have been expanded throughout the years.

While highway distribution of Chevrolet vehicles from the Oakland plants to California points now normally involves the entire area north of San Luis Obispo and Tulare, PMT is also called upon to transport them to widely scattered points throughout the state, including Los Angeles, Chino, Long Beach, Whittier, Pomona, Burbank, and Hollywood. California, with a population of almost fourteen million, naturally absorbs a substantial part of the production of these plants. PMT transported approximately 66,182 Chevrolet vehicles from Oakland to California points including ports, in 1955 and 29350 in the six months ending June 30, 1956.

With respect to interstate operations; Permit No. MC-78787, Sub 23, dated June 20, 1944, authorizes truckaway and driveaway service by PMT of new automobiles, trucks and buses, restricted to initial movements over irregular [fol. 246] routes, from Oakland, California, to Hawthorne, Nevada, and points and places in Nevada which are stations on the rail lines of the Southern Pacific Company. Permit No. MC-78787, Sub 31, dated June 21, 1955, grants similar authority to Carson City and Minden, Nevada. There are presently pending before the Commission, pursuant to favorable recommended reports applications by PMT seeking an extension of such an authority to points and places in Oregon which are stations on the rail lines of the Southern Pacific Company (Docket MC-78787, Sub 34) and to Austin, Tonopah, and Yerington, Nevada (Docket MC-78787, Sub 35).

Mr. Cronon: May I interrupt for some information at this point? Would you like us to wait until the statement is completely read before we make any objection to evidence or would you like for the objections to be made to the matters as they arise?

Exam. Linn: Well, that is a matter I prefer to leave up to counsel.

Mr. Cronon: All right, then. The next paragraph that Mr. Booth is about to read, I would like to make an objection at the end of the paragraph, if Mr. Booth would just hesitate there.

Mr. Jacobson: At this point, then, I was going to ask the same question. I move to strike the testimony with respect to the movement of cars in the state of California in the volume set forth on page 5 just testified to, on the [fol. 247] ground it's incompetent, irrelevant and immaterial and not germane to any issue in this case. It involves intrastate traffic.

Mr. Johnson: May I be heard, Mr. Examiner?

As I understand it, Mr. Jacobson is objecting to the statement on sheet 5. Yes, that is a part of the normal history of the over-all operations of applicant in a proceeding such as this. Information as to volume of traffic handled to points within California or to other points is relevant, bearing on its existing service, its capacity to handle additional units of traffic. It will be directly related to the volume of units which are expected to be available to a maximum potential basis to the destination points involved in this application.

Exam. Linn: That is sufficient. Motion denied.

Continue to read.

A. (Continuing) During the twenty-two year period PMT has operated under contract with the Chevrolet Division of General Motors from Melrose, it has provided a specialized service integrated and coordinated to the fullest possible extent with plant operations and we can make similar service available to the additional territory in the pending application.

Mr. Cronon: I move that the last sentence be stricken on the ground that it's a conclusion of the witness not supported by any evidence so far.



**Exam. Linn:** Motion denied.

[fol. 248]. A. (Continuing) At the Melrose plant, PMT established a receiving yard in 1935 immediately adjacent to assembly facilities, where its employees are stationed to arrange for the most expeditious flow of outbound vehicles. With expanded volume in recent years, additional space has been acquired. This includes a parcel of property located across Church Street from the receiving yard acquired several years ago and nearby property on Foothill Boulevard in 1956.

My Exhibit 4 is a drawing showing the entire productive and transportation facilities utilized in the operation of the Melrose plant. Arrows on the print indicate the movement of finished products from the General Motors yard directly into PMT's receiving yard through a discharge gate, at which point PMT accepts delivery under its contract.

Mr. Beardsley: I wonder if the witness is qualified to testify with respect to General Motors operations and could stand cross-examination respecting the possibility of getting to and from the General Motors plant.

Mr. Johnson: Mr. Examiner, I would be perfectly willing to ask the witness a few questions at this point which would indicate his qualifications.

**Exam. Linn:** If you desire, you may go ahead.

**By Mr. Johnson:**

Q. Mr. Booth, have you ever had occasion to examine the facilities at Chevrolet Plant No. 1?

A. Yes, I have.

[fol. 249] Q. Are you familiar, on the basis of personal observation, with the normal operation there?

A. I am. In fact, I was directly responsible for laying out the yard which we now use at the facilities in 1935.

Mr. Johnson: That is all.

**Exam. Linn:** You may continue.

Objection overruled.

A. (Continuing) There is no other facility available at or adjacent to the plant for the normal release and receipt

of units consistent with its functional arrangement. All finished Chevrolet vehicles to be transported by highway are turned over to PMT at this discharge gate. They include not only automobiles assembled at the Melrose plant, but also Chevrolet trucks which are assembled at Plant 2 and brought over to Melrose by General Motors employees.

The information provided by Exhibit 4 is supplemented by Exhibits 5 and 6, consisting of two aerial photographs taken on August 28, 1956, which clearly portray the Melrose operation.

We presently have 65 employees assigned to the operation at Melrose. There is a superintendent in over-all charge of the trucking operations at this facility, who maintains daily contact with Chevrolet Motor Division representatives concerning the volume of movement and controls the loading of equipment and dispatch to final destination. A mechanic is stationed at our receiving yard to perform minor repairs and servicing our trucking equipment, thus avoid- [fol. 250] ing interruptions which might be experienced. Major repairs are provided at PMT's Oakland garage, which is situated near downtown Oakland. Our present normal complement of employees also includes an assistant superintendent, a dispatcher-clerk, a clerk, 50 drivers, and 10 additional employees engaged in loading and yard work.

We maintain a substantial volume of equipment assigned to Melrose which is dedicated to its service. As of December 31, 1956, 40 power units and 35 non-power units were based at our facilities there. This is special equipment adapted to truckaway service for new motor vehicles of General Motors.

My Exhibit 7 consists of six photographs illustrating different types of equipment used in our contract carrier operations for General Motors. The first photograph illustrates a truck and semi-trailer unit loaded with six passenger vehicles. The next picture illustrates a truck and semi-trailer combination loaded with four passenger vehicles. The next picture illustrates a tractor and partially enclosed semi-trailer which carry four units. The next picture shows Pacific Motor Trucking Company power unit 387-D and semi-trailer 619 under load, which again is a combination involving four units being carried on the semi-

trailer and none on the power unit. The next picture illustrates another truck and trailer combination with two units loaded on the truck and two units on the trailer. The last photograph shows a combination truck and semi-trailer rig [fol. 251] with two units loaded on the truck and two on the semi-trailer.

Facilities owned by PMT and used in the Melrose operation, as of December 31, 1956, represent an investment of \$333,420. Of this total, transportation equipment constitutes \$314,892, and the balance of \$18,527 is made up of such items as garage tools, furniture, fixtures and miscellaneous items.

In addition to close coordination effected at the plant operating level the management of PMT maintains contact with the Chevrolet Motor Division of General Motors. This cooperative working arrangement involves such matters as information concerning production schedules, which enables us to make necessary arrangements for adequate equipment and personnel at the Melrose plant, and advance information of a confidential character concerning prospective model changes, essential to timely modifications of our equipment. The Chevrolet Division also keeps us advised as to precautions to be followed in handling its vehicles, thus minimizing losses in transit and promoting the delivery of its products to dealers in the best possible condition. These comments are also applicable to operations at Raymer which is controlled by the Chevrolet Motor Division of General Motors.

It is my considered judgment that PMT can expand this service to handle additional traffic from Melrose to destination points included in this proceeding. In this connection [fol. 252], I naturally have had occasion to consider various factors affecting such an undertaking.

Mr. George D. Cron, Traffic Manager of the Chevrolet-Oakland Division, has supplied me with the volume of motor vehicles which actually moved from Melrose to various points included in this application in the year 1955 and the first six months of 1956. Summary figures for Chevrolet vehicles, by states, are as follows:—

Mr. Jacobson: Just a moment. I want to object to this on the grounds that apparently the applicant proposes to

call the witness Cron, who is more familiar with the factual situation, and who will be interrogated by the various protestants on the method of movement and so forth. I believe the evidence should come in through that witness. It's hearsay twice removed with this man.

Mr. Handler: No foundation documents available, so far as has been indicated.

Mr. Johnson: Mr. Examiner, it's true that Mr. Cron will be available as a witness with respect to the detail of this information. He will be available for complete cross-examination. Mr. Booth, in considering a request to provide adequate operations, naturally, in the normal conduct of his duties, has to be advised by a representative of the potential shipper of traffic.

Exam. Linn: If it's understood that Mr. Cron will confirm these figures, the witness may proceed.

[fol. 253] Mr. Jacobson: May I make this observation at this time, in view of the ruling? May I ask the counsel if this witness is prepared to testify in detail concerning the method of movement of these cars and a particular point to which they move? If not, it seems to me that the witness who has the documentary evidence should be available for cross-examination.

Exam. Linn: Apparently the witness's testimony is that these production figures are among the factors which he considered in arriving at the conclusion that they can handle additional traffic from Melrose.

Mr. Jacobson: For only that purpose?

Exam. Linn: That is the tenor of the exhibit, as I take it.

Mr. Johnson: That is correct. We are not offering this to show that this amount actually did move. We are showing that this is the information received and on which he acted in making his judgment that he could handle the traffic.

Mr. Jacobson: Then it's definitely objectionable, if they don't assert that these are actual figures.

Exam. Linn: I assume they will assert that at the proper time.

Mr. Jacobson: He just said that they are not putting that in in that manner at this time.

Mr. Johnson: We are making the offer for the purpose of showing information on which he acted. A later witness will testify as to actual movement, based on his own personal knowledge and records, and he will be available for complete cross-examination.

Exam. Linn: The witness may proceed.

Objection overruled.

A. (Continuing) Summary figures for Chevrolet vehicles, by states, are as follows:

State	Year 1955	6 Mos. ended June 30, 1956
Idaho .....	5,292	2,558
Nevada .....	122	42
Oregon .....	5,401	2,666
Utah .....	41	12
Washington .....	24,805	12,260
Total .....	35,661	17,538

The maximum of potential traffic may be compared with the total of 67,106 vehicles which PMT moved in 1955 from Melrose and 29,782 vehicles moved in the first six months of 1956.

My study also has developed an estimate of the transit times required for truckaway movement to all points actually receiving units from the Melrose plant in 1955 and the first six months in 1956 and to all other points having Chevrolet dealers in the area involved in the pending application. The latter includes dealer points in Arizona and New Mexico. This information is contained in my Exhibit 8. The transit times shown are based on compliance with applicable speed laws and hours of service regulation of the Commission.

[fol. 255] Mr. Handler: I object to that and ask that it be stricken on the ground that no foundation has been laid to show that this witness is competent to testify with respect to the distances and time in transit required and the method of operations, whether by single or dual drivers to those points.

Exam. Linn: I would suggest that possibly the objection might be timely when Exhibit 8 is offered.



Mr. Handler: May it be noted now, then, that I will have an objection to Exhibit 8?

Exam. Linn: Yes.

A. (Continuing) To handle such traffic, it would be necessary for PMT to augment its equipment, storage facilities, and personnel devoted to service at Melrose. We are willing and able to assume such a commitment. Actual details with respect to such an expansion of service necessarily would have to be worked out with General Motors after this application has been determined by the Commission.

The second assembly plant included in the pending application is at Raymer, California, which is within the corporate limits of Los Angeles. This General Motors plant assembles Chevrolet motor vehicles, and contract carrier service has been provided from it by PMT since it opened in 1947.

The application asks authority to transport, in interstate or foreign commerce, new automobiles, trucks, and buses, except trailers, in initial movements, in truckaway or drive-[fol. 256] away service over irregular routes from the site of the General Motors-Chevrolet plant at Raymer to all points and places in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points and places in Arizona which are stations on the rail lines of Southern Pacific Company.

This involves an extension of existing PMT service. Intrastate operations are authorized by outstanding authority of the Public Utilities Commission of California which is reproduced on the last page of Exhibit 2. In addition, PMT has presently pending before the Interstate Commerce Commission an application in Docket No. MC-78787, Sub 36, seeking truckaway and driveaway authority from Raymer to points and places in the State of Arizona which are stations on the rail lines of Southern Pacific Company.

My testimony concerning the specialized service of PMT at Melrose is applicable to Raymer and I shall try to avoid repetition in describing the Raymer operation.

Mr. Cronon: May the record show that I have the same objection to the last sentence as I advised earlier in the proceeding, on account of it being a conclusion of the witness? The motion is that it be stricken.

**Exam. Linn:** I am not certain I follow you, counsel.

**Mr. Cronon:** Earlier in Mr. Booth's testimony I moved that a certain sentence be stricken on the ground that it was a conclusion of the witness, and I would like to make the [fol. 257] same motion here and ask that that sentence be stricken on the same ground.

**Mr. Johnson:** The earlier objection was overruled, so I don't suppose you want to hear from me?

**Exam. Linn:** Which sentence are you referring to at this point?

**Mr. Cronon:** It starts on page 11: "My testimony concerning the specialized service".

**Exam. Linn:** Yes, the record may stand as made. Objection overruled.

A. (Continuing) Exhibit 9 shows facilities provided by General Motors, Southern Pacific, and PMT at Raymer. Arrows on this drawing indicate the flow of outbound assembled vehicles, which are to be transported by highway, from the General Motors storage yard to PMT's receiving yard. The latter is immediately adjacent to the General Motors plant site at Raymer and is so placed as to permit an uninterrupted movement of assembled vehicles. PMT accepts delivery of such vehicles under its contract at the gate shown in the northwest corner of its receiving yard.

To permit visual understanding of this operating layout, we had aerial photographs taken on January 18, 1957, which are included in Exhibits 10 and 11.

We normally have a substantial number of employees assigned to Raymer. The present staff totals 77 and consists of the following:

[fol. 258]

*Supervisory and Clerical*

Superintendent .....	1
Dispatcher-Clerk .....	1
Truck Dispatcher .....	1
Clerk-Typist .....	1

*Operating and Equipment Maintenance*

Drivers and Yardmen .....	68
Mechanics .....	5

The duties of these employees are similar to those stationed at the Melrose plant, which I have already described.

In order to insure dependable and adequate service, we also assign a number of transport units to Raymer. As of December 31, 1956, 62 power units and 76 non-power units were based at our facilities there. Our investment in this equipment is \$588,052.49 and we also had a small investment of \$2,190 in tools and miscellaneous items. The equipment is similar to that shown in Exhibit 7.

Expansion of PMT's existing service so as to handle additional traffic from Raymer to the destination points involved in the pending application can be accomplished without any difficulty.

In this connection, I have secured from Mr. George R. Lilinthal, Traffic Manager of the Chevrolet-Los Angeles Division, a statement of units which actually moved by rail [fol. 259] from Raymer to this territory during 1955 and the first six months of 1956. Summary figures for individual states are as follows:—

Mr. Johnson: I suggest that the reporter just copy those figures into the record, in the interest of saving time, if that is satisfactory.

Exam. Linn: The matter may be handled in that manner.

(The following material is made a part of the record at the request of the Examiner:

<i>State</i>	<i>1955</i>	<i>1st 6 mos. 1956</i>
Arizona .....	2,453	1,034
Idaho .....	2,454	1,182
Nevada .....	885	396
New Mexico .....	165	63
Oregon .....	295	856
Utah .....	6,113	3,378
Washington .....	473	556
	<hr/> 12,838	<hr/> 7,465)

A. (Continuing) This maximum of potential traffic involves a relatively modest increase in that handled by PMT during the same periods. PMT moved 108,485 vehicles in 1955 and 52,852 vehicles in the first six months of 1956.

PMT presently has surplus yard capacity which would accommodate all of any such increase. We are willing and able to provide such additional personnel and equipment as might be necessary to meet General Motors' requirements.

[fol. 260] Estimated transit times for PMT service from Raymer to various destinations included in the pending application are shown in my Exhibit 8.

General Motors also owns an assembly plant in southern California at South Gate, shown on my Exhibit 3, which commenced operations in 1937 and assembles Buick, Pontiac, and Oldsmobile vehicles.

The application in this proceeding requests authority to transport, in interstate or foreign commerce, new automobiles, trucks, and buses, except trailers, in initial movements, in truckaway or driveaway service over irregular routes from the site of the General Motors plant at South Gate, California, to all points and places in Arizona, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

As indicated previously, this application contemplates an extension of contract carrier operations provided by PMT since plant operations started. Intrastate operations are conducted under the permit issued by the California Public Utilities Commission which appears on the last page of my Exhibit 2. PMT has interstate authority under Permit No. MC-78787, Sub 27, dated April 21, 1950, to provide truckaway and driveaway service from Los Angeles to Calexico and San Ysidro, California, and this authorization includes South Gate, which is within the terminal area of Los Angeles as defined by the Commission in Docket No. MC-C-4.

[fol. 261] PMT has provided a specialized service, coordinated with operations of the South Gate plant, during the twenty years it has operated under contract with the Buick-Oldsmobile-Pontiac Division of General Motors. Similar service will be made available to additional points involved in the pending application.

Mr. Cronon: At that point I would like to interpose the same objection, on the grounds that it is a conclusion stated by the witness.

Exam. Linn: The testimony will stand. Objection overruled.

A. (Continuing) My Exhibit 12 is a drawing showing the facilities used in operation of the South Gate plant, including those necessary for rail and highway transportation. Arrows on this print indicate the movement of outbound assembled vehicles from the General Motors' yard into PMT's receiving yard. PMT accepts delivery under its contract at the gate shown at the terminus of Seminole Avenue. The location of this receiving yard immediately adjacent to the outbound yard of the South Gate plant permits an uninterrupted flow of vehicles.

The information provided by Exhibit 4 is supplemented by Exhibits 13 and 14, consisting of two aerial photographs taken on January 18, 1957.

Mr. Johnson: Which is shown in Exhibit 12?

The Witness: Shown in Exhibit 12.

Mr. Johnson: Correct.

[fol. 262] A. (Continuing) They give a clear picture of the South Gate operating layout.

We presently have 48 employees assigned to South Gate, consisting of the following:

*Supervisory and Clerical*

Superintendent .....	1
Dispatcher-Clerk .....	2
Truck Dispatcher .....	1

*Operating and Equipment Maintenance*

Drivers and Yardmen .....	42
Mechanics .....	2

Their functions are similar to those of employees stationed at the Melrose plant, which I have explained previously.

A substantial volume of transport equipment is normally assigned to South Gate service. As of December 31, 1956, 57 power units and 57 non-power units were based at our facilities there. This represented an investment of \$451,060.88, and we had an additional investment of \$1,504.76 representing tools and miscellaneous items. This equipment



is adapted to truckaway service for new motor vehicles of General Motors and the character of the units is shown in Exhibit 7.

Expansion of PMT's existing service so as to handle additional traffic from South Gate to the destination points involved in the pending application is feasible. This statement reflects consideration of various factors, including [fol. 263] potential traffic volume and transit times.

In this connection, I have secured from Mr. Joseph Singler, Traffic Manager of Buick-Oldsmobile-Pontiac Assembly Division at South Gate, a statement of Buick-Oldsmobile-Pontiac units which actually moved from South Gate to this territory during the first three months of 1955. Summary figures for individual states are as follows:—

Mr. Johnson: May this matter be copied into the record as though read?

Exam. Linn: It may be copied.

Mr. Jacobson: For the purpose of the record, may the objections I urged to the first list of figures be likewise considered as an objection to the proposed traffic out of the Chevrolet Raymer plant, on the ground that the evidence of the witness is preferable, because I have reference to a transcript in a previous case that—or I will have reference?

Exam. Linn: It may be understood that there is objection and the ruling is the same in the instant of Raymer and South Gate as it was to the Melrose plant.

(The following material is made a part of this record at the direction of the Examiner:

State	Vehicles
Arizona .....	1,114
Idaho .....	247
Montana .....	36
[fol. 264]	
Nevada .....	550
Oregon .....	3,118
Utah .....	221
Washington .....	2,857
	<hr/> 8,143)

A. (Continuing) This maximum of potential traffic may be compared with a total of 28,112 vehicles which PMT moved in the first three months of 1955 from South Gate.

PMT presently has adequate yard capacity to handle such an additional volume of traffic. We are willing and able to provide such additional personnel and equipment as may be necessary to expand our existing service at South Gate.

Estimated transit times from South Gate to points and places in the entire destination territory covered by this application are provided in my Exhibit 8.

Before concluding, I want to stress the emphasis given to safety in the conduct of PMT's operations, including the contract carrier service under consideration.

PMT is a member of the Truck Owner's Association of California, which is a part of American Trucking Associations, Inc., and this enables us to participate in the latter's safety programs. Our Manager of Equipment holds a membership in the Equipment and Maintenance Council of American Trucking Associations, Inc. He also is a member of the Society of Automotive Engineers. Our Director of [fol. 265] Safety holds a full membership in the American Society of Safety Engineers, and is a member of the American Trucking Associations' Council of Safety Supervisors. In addition, PMT holds a membership in the American Trucking Associations' Section of Safety and a membership in the National Safety Council, Commercial Vehicles Section. Its Safety Director has been designated as the recipient of the 1955 Marcus A. Dow Memorial Award for outstanding contributions to the field of motor vehicle safety engineering.

Major importance has been attached to safety in training our supervisory and operating employees under the guidance of our Director of Safety.

We also have an effective program of preventive maintenance under our Manager of Equipment. This provides for the servicing and inspection of each unit of equipment at 2000-mile intervals until it is completely overhauled at some point between 150,000 and 165,000 miles, depending upon the type of unit involved, and whether it is a gas or diesel unit. At Oakland, South Gate, and Raymer, small

repair shops are maintained for minor repairs and major repairs are made at the PMT's well-equipped shops in Oakland and Los Angeles.

These efforts have been productive. Our accident frequency dropped from 12.2 to 5.27 accidents per 100,000 miles from 1947 to 1956.

PMT's service in the transportation of new automobiles, [fol. 266] trucks, and buses, in initial movements, from the Melrose, Raymer, and South Gate plants is highly specialized and requires personalized attention, which we have provided. The physical facilities, devoted to this service, which I have described, have been designed so as to provide full coordination with General Motors' operations at these plants, and our personnel assigned to these operations are qualified by training and experience to give the close attention essential to maintaining an uninterrupted distribution of the plants' products.

Mr. Cronon: At that point may I make my same objection, upon the ground that it's a conclusion, applied to the paragraph at the beginning of page 17 and continuing over to sheet 18?

Exam. Linn: Objection overruled.

A. (Continuing) Our truckaway and driveaway services are confined to General Motors. This dedication of our efforts to a single shipper has enabled us to meet its requirements throughout the years with maximum efficiency. We will continue in the same manner in the extension of service contemplated by the pending application.

Exam. Linn: We will be in recess briefly.

(Short recess.)

Exam. Linn: The hearing will be in order.

By Mr. Johnson:

Q. Mr. Booth, you testified that the pending application requested authority to transport new automobiles, trucks [fol. 267] and buses, except trailers, from South Gate. Is that a correct statement?

A. That is not a correct statement. The application itself calls for authority to transport new automobiles, except

trailers, from the site of the General Motors Buick-Oldsmobile-Pontiac plant at South Gate, California, to all points and places in the states of Arizona, Idaho, Montana, Nevada, Oregon, Utah and Washington, and that is the authority which we seek.

Q. Turning to your Exhibit No. 8, which deals with truckaway transit time, what factors and what matter did you consider in preparing this study?

A. Well, the primary factor is the mileage, and we computed the mileage from the three assembly plants to the destination points, considering the over-all terrain and operating conditions with which we are generally familiar, we arrived at a miles per hour which we thought was suitable for the haul of equipment. From that, we determined how many transit time days would be required to make the movement by truck from any of the plants.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

#### OFFERS IN EVIDENCE

Mr. Johnson: I offer Exhibits 1 through 14.

\* \* \* \* \*

[fol. 268] Cross examination.

By Mr. Jacobson:

Q. Mr. Booth, do I understand from your last statement that as of this time you have no guarantee of any particular traffic from the General Motors at any of these three plants if this authority is granted?

A. General Motors wants to have the opportunity to use highway service to the territory in the West served by [fol. 269] these plants. The exact volume which will be tendered to us for the territory in question has not been finally determined, as far as PMT is concerned.

Q. Insofar as General Motors plants are concerned at the present time, isn't it a fact that all of the traffic that is moving to these points is moving via rail?

A. That is my understanding.

Q. And that rail is the Southern Pacific as the originating carrier, is that correct?

A. That is correct.

Q. And to each of these points in these states where the Southern Pacific doesn't serve, it's an interline operation with another rail carrier, is that correct?

A. That is right.

Q. To your knowledge, to any points in these states, is there any highway carrier serving any of these plants at the present time, with regularity?

A. No, there is not.

Q. Well, is it the intent of the PMT and the Southern Pacific to divert, in view of the desire of General Motors that the traffic go by highway carrier, to divert the rail traffic to the PMT highway service if this permit is granted?

Mr. Johnson: I object to that question as being misleading. The shipper controls the traffic. The shipper does the diverting.

Mr. Jacobson: You have qualified your witness here for [fol. 270] all of these exhibits. What, then, is the purpose of showing that certain thousands of cars move to a certain point, if they are now moving rail?

Exam. Linn: Will you read the question, Mr. Reporter, please?

(Question read.)

By Mr. Jacobson:

Q. From Southern Pacific?

Exam. Linn: Are you able to respond, Mr. Booth?

The Witness: Yes, I think so.

A. PMT doesn't have any option in this matter. General Motors has come to us and said they want the availability of highway service to this territory in question. We have no election whether we divert the traffic or not. They are the ones who make that decision.

By Mr. Jacobson:

Q. Well, where do you expect to get the traffic from, if not from the rail carrier that is now serving the points?



A. The shipper with whom we do business, General Motors, has in mind diverting some of the traffic from the present movement by Southern Pacific and by other rail lines to a highway service operated by Pacific Motor Trucking Company.

Q. As I understand it, the shipper has requested you to inaugurate a truck service on PMT to serve all of these points that are now being served via rail, is that correct?

A. All the territory served by the General Motors plants in this western territory.

[fol. 271] Q. Did you make any investigation to find out whether or not Robertson has served the Raymer plant to points proposed by this application under their authority?

A. From my knowledge of the plant layout, I would say they have not, because it would be very difficult for them to accept vehicles—

Exam. Linn (interrupting): The question was whether you had made any investigation, Mr. Booth.

A: No, I haven't made any investigation.

By Mr. Jacobson:

Q. You implemented your answer. Will you explain what you meant by the latter part of your answer in which you said it would be practically impossible for them to render service to the Raymer plant number under the present facilities. I am now referring to your Exhibit No. 9.

A. If you will refer to Exhibit 9, Mr. Jacobson, you will see that the location of our yard is in the direction of flow of the outbound finished products, our receiving gate was located at General Motors' own suggestion when this plant was constructed.

Mr. Jacobson: I move that that be stricken.

[fol. 272] By Mr. Jacobson:

Q. Will you restrict yourself to knowledge that you have?

A. I know that. At the time this plant was constructed.

we considered two or three possible locations for our receiving yard. This—

Exam. Linn: Let me suggest that if counsel is able to frame a more specific question—the question now before the witness is so general that he may speak at great length on the general subject.

By Mr. Jacobson:

Q. Referring to your Exhibit No. 9, that property on which General Motors' plant is constructed was purchased or acquired from the Southern Pacific Company, is that correct?

A. That is my understanding, yes.

Q. You had something to do with it, didn't you?

A. Not the purchase of the property, no.

Q. Well, it was all Southern Pacific property?

A. I understand that a large section of this property was purchased by Southern Pacific. Just how much of it, I am not sure.

Q. You mean by General Motors?

A. It was purchased by Southern Pacific from some outsider and some of it was resold to General Motors.

Q. Do you know any portions of the General Motors facility at Raymer that aren't on property that was acquired directly from Southern Pacific?

[fol. 273] A. Well, I don't want to try to answer that, Mr. Jacobson. I don't know if it's a fact that they bought all of this property from Southern Pacific.

Q. Didn't you heretofore testify in a previous proceeding that the property was acquired from Southern Pacific?

A. I don't recall whether I did or not.

Q. Well, adjacent to the facilities of General Motors is property that is owned by Southern Pacific that is occupied and utilized by PMT, is that correct?

A. That is correct.

Q. And it's immediately adjacent to that property, isn't that correct?

A. That is correct.

Q. And isn't it a fact that you can not get to the rail

loading platform or to a public highway from the discharge gate of the Chevrolet plant at Raymer without going over the property of Southern Pacific and PMT?

A. That is right.

Q. Who owns the property that is now occupied by PMT at the Raymer plant?

A. It's owned by Southern Pacific Company.

Q. And is it under lease to PMT?

A. It is, yes.

Q. Who keeps the books and records of the PMT operation of motor vehicles for General Motors out of the Raymer plant?

[fol. 274] A. Our accounting department.

Q. Your accounting department or the Southern Pacific?

A. It's actually done by accountants paid by Southern Pacific Company, and we are billed for such services by the Southern Pacific Company.

Q. In other words, the books and records are kept by the Southern Pacific Company in their offices, isn't that correct?

A. Yes, for us, and we pay them for the work.

Q. What access is there to a public highway, if any, from the General Motors plant to—

Mr. Jacobson: Strike that.

By Mr. Jacobson:

Q. Referring to the BOP plant at South Gate, which is your Exhibit No. 12, is the situation there the same with respect to the ownership of property adjacent to General Motors as it is at Raymer?

A. Quite similar. The property which we occupy, which is labeled "Pacific Motor Trucking Company", shown on Exhibit 12, is owned by Southern Pacific Company, leased to General Motors and re-leased by General Motors to us.

Q. Is that adjacent to the delivery portion of the General Motors plant?

A. That is correct. The delivery gate at the corner of Alameda and Seminole Avenues lets onto our receiving yard.

Q. So, in order to get to the public highway from the delivery gate of General Motors at South Gate, you must [fol. 275] go over the property of Southern Pacific and PMT, is that correct?

A. That is right, yes.

Q. Thus far you have never authorized any carriers to go over your property to the receiving gates at either Raymer or South Gate, have you?

A. No, we haven't.

Q. Likewise, is it necessary to go over the property of Southern Pacific and PMT at South Gate to get to the rail dock?

A. Well, it depends on who wants to get there. If you want to switch cars in there, you have to go over Southern Pacific tracks.

Q. How can you get there without switching cars into the plant?

A. Well, somebody might want to get into—walk into the rail loading dock—is that what you mean?

Q. I am not talking about walking. I am talking about moving automobiles.

A. Well, the automobiles to the rail loading docks are loaded into cars which move over Southern Pacific track, that is right.

Q. So any facilities for movement by either rail or truck out of the South Gate plant, the same as out of the Raymer plant, must go over the property of Southern Pacific, which is leased to the PMT?

A. This plant is served by Southern Pacific and PMT—

Q. (Interrupting) Just answer my question, will you, please?

A. That is right, yes.

[fol. 276] Q. What is the situation with respect to the plant at Oakland? Is it a similar situation?

A. It's a similar situation with respect to the serving of the plant, it's served by Southern Pacific track. The gate through which highway vehicles are delivered lets onto a yard leased by Pacific Motor Trucking Company from the Southern Pacific Company. We also lease at that location, though, property from two or three other people.

Q. Who leases from two or three other people?

A. Pardon?

Q. Who leases from two or three other people?

A. We do, Pacific Motor Trucking Company does.

Q. You mean property adjacent to this plant?

A. Nearby the plant. If you will refer to—

Mr. Johnson: Exhibit 4.

A. (Continuing) —Exhibit 4, you will note that across Church Street from the PMT paved parking space, adjacent to the plant itself, is some additional property, which is marked "PMT Paved Parking Space". There is also some additional PMT paved parking space on Foothill Boulevard at the corner of Sixty-eighth Avenue and Foothill Boulevard.

By Mr. Jacobson:

Q. That property isn't necessary to be utilized for the purpose of picking up automobiles from the delivery gate of General Motors, is it?

A. No, but it's necessary to our operations, that is part [fol. 277] of our operating property.

Q. In other words, you use it for garage and storage and so forth?

A. The property on Foothill is used for truck storage and the property across Church Street is used both for automobile and truck storage.

Q. But no truck carrier, or rail, can have access to the delivery gates of the General Motors factories at either one of the three locations without going over the property of Southern Pacific or PMT or getting their consent, is that right?

A. They can't reach the regular delivery gate of the plants at any of the three locations without going over the PMT yard.

Q. Without getting your consent?

A. That is right. These yards are PMT yards.

Q. And in the past, to your knowledge, you have never given anybody that consent?

A. No, we haven't.

Q. If the traffic which is now moving rail to points other than those directly served by Southern Pacific is diverted



to highway traffic, it will in turn divert traffic from other rails that are now serving the territory you don't serve, won't it?

A. That is correct, yes.

[fol. 278] Q. All passenger cars. The two clients that I am representing, Mr. Booth, in this proceeding are motor common carriers of automobiles, and from time to time they have transported from other manufacturing plants and assembly plants General Motors products. They would both like very much to perform this same service out of the plants that you are seeking to serve. In the event they were successful in persuading the traffic department of General Motors to tender them some traffic and the traffic department of General Motors, or whoever is in charge or has the say-so, should request you to let my clients cross your property and get to the plant and load those vehicles, would your company honor that request and permit my clients' trucks to cross your property?

Mr. Johnson: I object to that as being highly speculative and beyond the realm of proper cross-examination.

Mr. Smith: I don't think it's beyond the realm of his proper cross-examination. This gentleman discussed in de-[fol. 279] tail that the property adjacent to the loading plants was his property and on cross-examination by Mr. Jacobson he said that he wouldn't permit any other carrier to cross his property.

Exam. Linn: Are you asking the witness whether he would yield an easement permanent or temporary or trip easement?

Mr. Smith: Yes, that is my question.

Exam. Linn: Or sell the property or what other possible arrangement?

Mr. Smith: Just give them permission to cross the property.

Exam. Linn: I don't think the question is sufficiently clear. Would you frame it with respect to a given situation so that you might be able to get an answer?

Mr. Smith: I don't want to argue the point. I will abide by your observation.

Exam. Linn: If you have a concrete business proposition to offer, I can see where—

Mr. Smith: I am just an attorney. I can't speak for my clients on any concrete business proposition they might have to offer.

That is all.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record. We will adjourn one hour for lunch.

(Whereupon, at 12:15 p.m., Wednesday, February 20, 1957, the hearing in the above-entitled matter was recessed until 1:15 p.m. of the same day.)

[fol. 280] Afternoon Session—1:15 p.m.

Exam. Linn: The hearing will be in order.

Will you continue with the cross-examination of Mr. Booth.

Cross examination.

By Mr. Handler: -

Q. Mr. Booth, would we be correct in assuming that if this application were granted there would be a one-way haul and that there would be no traffic to be transported back to California?

A. That is correct, yes.

Q. At the present time does PMT perform any truckaway service of automobiles from any of these assembly plants other than to points in California?

A. Yes, we perform truckaway service into Nevada.

Q. And to rail stations in Nevada?

A. Rail stations and certain off-rail points in Nevada which we are authorized to serve.

Q. And that is why those particular points were eliminated from this application?

A. That is correct.

[fol. 281] By Mr. Handler:

Q. Mr. Booth, you said you determined the time in transit from computing average miles per hour that the equipment could run. What was that mileage per hour?

A. Well, the miles-per-hour figure which we have used runs out to a basic figure of 25 miles per hour to Pacific Northwest points and to Nevada and it averages 20.2 miles per hour.

To the Arizona points we used 30 miles per hour, and the average speed works out to 25.7 miles per hour. That reduction is caused by the allowance for eating time and stops en route.

[fol. 282] Q. Then, you took the total mileage from Oakland, for example, to Boise, Idaho, and divided it by that mile per hour you used into the Northwest?

A. That is right, yes.

Q. Now, are you proposing that the equipment will operate 24 hours a day?

A. Yes. The equipment would operate through—I happen to have the actual schedule here from Melrose to Boise.

Q. All right.

A. Contemplating a departure from Melrose, say, at 5:30 p.m. on Monday, we would arrive at Boise at 2 a.m., Wednesday, operating by McDermitt.

Q. You wouldn't deliver at 2 a.m., would you?

A. No. We had to have some starting place on this schedule of times—

Q. (Interrupting) Answer the question. Would you deliver at 2 a.m.?

A. No, I said no. I said we have to have some starting time.

Q. How would you be able to operate 24 hours a day in compliance with the safety regulations and the hours-of-service regulations?

A. There are two ways to do it. One is through the use of relay drivers and the other is through the use of sleeper cabs.

Q. Which way are you proposing to do it?

A. We propose to use relay drivers.

[fol. 283] Q. By the way, in your prepared statement I did not see that you indicated how many units of equipment you have located at Oakland. If it's there, I can't find it. Can you tell me—?

Mr. Johnson: It's there.

Mr. Handler: Will you refer, please, counsel, to the page where it's indicated?

The Witness: It's on page 7, a short paragraph there.

By Mr. Handler:

Q. Forty power units and thirty-five non-power units. And are those predominantly used in California?

A. Yes, predominantly they are. Some of them operate in Nevada.

Q. Do you know how many additional units of equipment [fol. 284] ment you were to purchase for the proposed operation, to be stationed at Oakland?

A. Assuming that we had the entire volume, we could arrive at an equipment requirement, which I have here.

Q. For clarification, are you assuming that the entire volume is going to move by truck and all of it be diverted from rail?

A. Based on that assumption, that is the equipment figure which I will now give you.

Q. All right.

A. From Melrose, we would require 115 truckaway units.

Q. Additional?

A. Additional units, yes.

Q. Do you know what investment would be required for that?

A. About \$2,400,000.

Q. Have you the same figures for the Southern California points?

A. Yes. For South Gate we would require 114 additional units, with an investment of about \$2,400,000.

And at Raymer 46 additional units with an investment of about \$960,000.

Q. What is the total investment figure for your equipment?

A. Those figures which I read off total, in round figures, \$5,740,000. We have some standby equipment at present which would serve to reduce this investment to around \$5,000,000.

Q. Is it your understanding that all the traffic will be diverted to truck operation?

[fol. 285] A. No. The extent to which General Motors will use this service will depend on their own shipping requirements.

Q. Well, they have given you some indication as to what proportion of the whole traffic will go by rail and what portion will go by truck, haven't they?

A. No, there are certain points where we definitely know that service may be required. Boise is probably one of such points.

Q. Required by what, truckaway?

A. Where service would be required by General Motors, truckaway service.

Q. Assuming, along with the original assumption we made, that all the traffic would go by truck, do you know how many rail cars would be put out of service by substituting the motor truck equipment?

A. No, I do not.

Q. You haven't made any computation on that?

A. No, I haven't.

Q. I take it, a number of rail cars are now utilized in this rail service. Is that not true?

A. I don't really know anything about that.

Q. Is it your understanding that all the traffic now moving from these points for General Motors is moving via Southern Pacific or PMT?

A. No; this traffic is moving to the territory in question, covered by the application, by rail service entirely.

[fol. 286] Q. That is Southern Pacific, isn't it, originally, as the initiating carrier?

A. Initially by Southern Pacific, yes.

Q. To the extent there is a diversion to truck, there is obviously going to be a reduction in the use of rail cars, that follows, does it not?

A. That follows, yes.



Q. Are you going to establish any new terminals as a result of the granting of this application, should it be granted?

A. No; we have terminals at these three plants in question now.

Q. Where are you going to keep your relay drivers, just at roadside stations?

A. I misunderstood you. I thought you meant a terminal at the plant.

Q. No; I mean terminals in the territory.

A. In a technical sense, it will be what are called terminals at the relay points. Those terminals are designated by agreement with the unions.

Q. Have you established such an agreement yet?

A. We have from California into Portland, Oregon, but not into other territory.

Q. It will be necessary to negotiate those with the unions in such territories as Idaho and Montana and other states?

A. That is right.

Q. And at those particular locations what facilities will [fol. 287] you have?

A. Well, they will be actually merely an interchange point where there will be a driver based who will accept the truckaway equipment from the incoming driver upon arrival and proceed to another relay point or to destination.

Q. Are you going to establish any buildings or greasing stations or repair shops or offices in any of these points?

A. That is not our present intention, no.

Q. That is not your plan?

A. No.

Q. Now, Pacific Motor Trucking Company, as indicated, is a common carrier of general commodities in some of these western states, is it not?

A. Yes.

Q. Does it haul automobiles or general freight for General Motors Corporation under its published tariffs?

A. It does, but not in territory covered by this application.

Q. Does it operate into or out of any of the plants of General Motors Corporation that you seek to serve in this application?

A. It does, yes.

Q. What type of traffic is it?

A. There is a very small amount, generally speaking, of parts traffic out of the Melrose plant. There is a larger amount of traffic out of the, parts traffic out of the, Raymer plant. To my knowledge, there isn't any movement of parts [fol. 288] out all out of the South Gate plant.

Q. What about parts into these plants, or materials or supplies? Doesn't PMT perform service in that connection?

A. There is no substantial volume moved by PMT into those plants.

Q. There is some volume, however?

A. There is some shipments moving into the plants, yes.

Q. The bulk of the inbound movement to the plants, of the parts from which the automobiles are made, comes in by Southern Pacific rail service?

A. That is my understanding.

Q. In accordance with the published rail tariffs of the Southern Pacific Railway Company?

A. That is, I presume so, yes.

Q. You have indicated that the traffic you will haul if this application is granted will be on truck rates that you may establish pursuant to the Commission's authorization having to do with contract motor carriers. Is that true?

A. That is right.

Q. It won't be the rail rates?

A. It will be contract rail rates published by Pacific Motor Trucking Company.

Q. Your authority in California is general commodity authority, isn't it, from stations to the rail lines?

A. Maybe some of it is. There may be some exclusions. [fol. 289] Q. I had understood all automobiles were excluded, since you had a pending application from these stations—

A. A pending contract carrier application.

Q. Do you have pending now authority to Oregon points, to transport automobiles?

A. There is another witness who can answer that question. I am not sure.

Q. Are you transporting any vehicles for General Motors Corporation to points in Oregon by truck?

A. No, we are not.

Q. If that authority exists, you haven't used it, or General Motors hasn't used it?

A. That is correct.

Q. You haven't, you are sure, hauled any automobiles to Portland, Oregon?

A. That is right.

Q. Do you, in filing your minimum rates with the Interstate Commerce Commission, publish or set forth the actual rates you charge or the minimum rates?

Mr. Johnson: I object to that question as being improper cross-examination, beyond the scope of the direct and not properly an issue in this case.

Mr. Handler: I think it will be an issue before we get this case decided.

Exam. Linn: What is its relevancy?

[fol. 290] Mr. Handler: Well, the relevancy is that if the carrier files only minimum rates, there is no way by which the actual rates could be known and if they vary from the published rates of the railroad we have a situation whereby virtual dual operations, as between common carrier truck, common carrier rail and contract carrier truck, preferences and prejudices can result contrary to the provisions of the Act.

Exam. Linn: Well, the witness may answer the pending question. I suppose that trouble of a serious nature may develop on any succeeding question along the same line.

By Mr. Handler:

Q. Do you recall the question?

A. I don't know the answer to the question.

Q. Your answer is you don't know?

A. That is right.

Mr. Handler: Is there going to be a witness here who will know?

Mr. Johnson: Read the question.

(The reporter read as follows:

Q. Do you, in filing your minimum rates with the In-

terstate Commerce Commission, publish or set forth the actual rates you charge or the minimum rates?"")

Exam. Linn: The witness says he doesn't know.

Will you continue.

Mr. Handler: I didn't know that he had said that.

By Mr. Handler:

Q. I asked you about hauling as a common carriers, that [fol. 291] is, PMT, interstate. May I ask you the same question with respect to California? Do you haul any automobiles for General Motors as a common carrier in California?

A. No, we do not.

Q. That is all contract carriers?

A. That is right.

Mr. Handler: I meant to ask counsel if there would be a witness who can answer the question about the proposed rate schedule.

Mr. Johnson: No, that is not our present intention.

By Mr. Handler:

Q. Mr. Booth, I would like to ask you, if I may, about the Melrose plant. If I understand your testimony, it is in the city of Oakland?

A. That is right.

Q. You have indicated in your direct testimony there are two plants in Oakland. Is that correct?

A. Yes.

Q. You only offered a map and photographs, as I understand it, of one plant. Is there only one plant that we need to consider here, one plant which is located in Oakland, as being involved in this application; the one that you show on Exhibit No. 4?

A. Our service is all performed from Plant No. 1.

Q. That is the one that is mapped out on Exhibit No. 4, is it?

A. That is right.

Q. So the other plant is not involved, is that right?

[fol. 292] Mr. Johnson: Do you mean in the application?

Mr. Handler: Yes.

Mr. Johnson: I think the application speaks for itself, the application reference to both plants, to serve both plants.

By Mr. Handler:

Q. Well, you haven't testified to any other one, have you? If you have, I didn't hear it:

A. No; I said our service was out of Plant 1.

[fol. 293]

By Mr. Bieneman:

Q. I will ask you the direct question, sir. Is it your testimony that you do not know whether or not the Southern Pacific serves any of these other manufacturers of automobiles in Los Angeles?

A. That is right. I am under oath and I wouldn't want to say that they do.

Q. Let's put it this way: Do you know of any plants there that they do not serve, any of these automobile manufacturers?

A. I don't know.

Mr. Johnson: He has all ready answered this question two times; saying he doesn't know. Now, it seems to me that ought to be sufficient.

Mr. Bieneman: Mr. Examiner, I don't think we need to argue that point. I think the witness obviously must have some knowledge on the subject, and to say he doesn't know is hardly an adequate answer.

Mr. Johnson: I object to that gratuitous comment of counsel.

[fol. 294] We will be perfectly willing to supply an answer to your question. I don't know myself. If you would like to know, we will provide it.

Mr. Bieneman: I would like to develop that matter on the record. If you would have a witness who will be in a position to answer those questions, I would like to develop it through him.

Mr. Johnson: You can call any witness, so far as you want.

Mr. Bieneman: That I don't think, answer my question, and it's not in conformance with what you just said. You



said you would be willing to supply that information. If you will tell me what witness will be available to supply that information, I will be glad to defer my questions on that matter.

Mr. Johnson: I will provide it to you by stipulation. I am not going to put a witness on to provide it. I stand on my objection to your questions to this witness, on the ground of repetition. He has answered twice that he doesn't know.

Exam. Linn: Is there anything further in the way of comment?

Mr. Bieneman: Oh, yes, indeed, sir.

That would be satisfactory. May we have that understanding, then, that before the close of the hearing counsel will by stipulation indicate which of those plants in the Los Angeles area are served by the Southern Pacific Railroad?

Exam. Linn: That is a matter for counsel to arrange between themselves.

Will you continue with your cross-examination?

Mr. Bieneman: I think you are right, sir, but I would like to have an indication on the record if I am correct in my understanding of counsel's statement.

Exam. Linn: Counsel, do you have means at hand by which you could produce evidence? If you would desire and could agree upon something and offer a stipulation, that would be satisfactory also.

Let's get on with this witness now.

By Mr. Bieneman:

Q. If I were to ask you similar questions as to the service provided by the Southern Pacific to other automobile manufacturers in the San Francisco area, would your answer be the same?

A. There are no other automobile manufacturers in the San Francisco area — I will stand corrected on that. There is a Ford plant at Milpitas, and again I don't know the answer as to whether Southern Pacific serves that plant or not.

Q. I was interested in an answer that you gave on, I

think, both direct and cross-examination, in which you said that the Pacific Motor Truck had no choice with respect to this diversion problem, that the shipper had simply come to you and said that it wanted highway service. Was that right?

A. That is right. We have no choice in diverting traffic controlled by General Motors.

[fol. 296] Q. Did the shipper tell you that unless the Pacific Motor Truck application were filed it would put the traffic on some other truck service?

A. The shipper told us that unless we were successful in giving them a complete offer of service which they desired, they would enter into a proprietary operation, as they are able to do if they desire, or hire some other carrier.

Q. When you say "they told us that", I take it that you mean by "us", that they told the Southern Pacific Railroad that, did they not?

A. And they have told me that, too.

Q. So that you were told, in effect, by the shipper, either that Southern Pacific should provide truck service or, in the alternative, the shipper would find other means, either in private carriage or through some other carrier for hire, is that right?

A. That is right.

[fol. 297] By Mr. Bieneman:

Q. In connection with the statement that was made to you by General Motors concerning their intention to divert traffic to either private truck or independent truck if you didn't do something, is it not a fact that one of the reasons, at least, advanced to you for that intention was the higher cost to General Motors of rail service, having in mind the loading and unloading cost?

A. No, it was not.

Q. All right, sir. What was the reason, if any, that General Motors said they were going to go to a truck operation, regardless of whether you did it or somebody else did it?

A. General Motors wants to place itself in a position equal with its competition. Its competition here in the West

has a highway service available to it, to the entire plant territory. Chrysler has it and Ford has it. General Motors [fol. 298] told us that they wanted to be in the same position.

Q. In other words, your thinking or your understanding from them is simply that they would like to be in a position to use the same type of truck service and to the same territory as Ford and Chrysler do out of the same areas, is that right?

A. They want to be equal to their competition.

Q. Equal service and equal rates?

A. I don't know about the rates.

Q. They don't care about the rates?

A. I haven't discussed the rates at all.

Q. As far as you know, then, the only thing they are interested in is the equal service feature?

A. To have an equal opportunity to use highway transportation with their competition here in the western territory.

[fol. 299] Exam. Linn: The hearing will be in order.

Exhibits 1 to 14 have been previously offered. Is there any objection to their receipt in evidence, or any one of them?

(No response.)

Exam. Linn: Without objections, Exhibits 1 through 14 are received in evidence.

(Applicant's Exhibits 1 to 14, inclusive, Witness Booth, were received in evidence.)

Mr. Frizzell: Mr. Examiner, we have four exhibits to be marked for identification. These exhibits will be offered in connection with the testimony of Mr. Lynch.

Exam. Linn: The record may show a photograph of a passenger automobile marked as Exhibit 15.

The photo of a station wagon as Exhibit 16.

The photo of pickup truck as Exhibit 17.

And a one-page document, a map of the United States, as Exhibit 18.

(Intervenor's Exhibits Nos. 15 to 18, inclusive, "Witness Lynch, were marked for identification.)

Mr. Frizzell: Mr. Lynch, please.

WILLIAM R. LYNCH was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you give the reporter your name, sir?

[fol. 300] A. William R. Lynch.

Q. What is your business address, sir?

A. General Motors Building, Detroit, Michigan.

Q. What is your occupation?

A. Traffic Director of the Chevrolet Motor Division, General Motors Corporation.

Q. How long have you been traffic director?

A. Since January 1, 1946.

Q. Prior to that time, Mr. Lynch, what did you do?

A. I started with Chevrolet January 16, 1923, in New York City, as traffic representative. From there I went to Tarrytown as assistant traffic manager, assistant traffic manager Flint, Michigan, traffic manager Kansas City, Missouri, traffic manager Norwood, Ohio, traffic manager at Baltimore, Maryland, and I was transferred to Detroit, Michigan, September 16, 1935, as assistant traffic director.

Q. Throughout all this period of employment with Chevrolet you have been engaged in the traffic business?

A. Yes, sir.

Q. When I say "traffic business", you have been dealing with transportation agencies for Chevrolet?

A. That is right.

Q. What is the business of Chevrolet Motor Division, Mr. Lynch?

A. Manufacturer of passenger cars and trucks and chassis.

Q. And, by the way, is Chevrolet part of General Motors?

[fol. 301] A. Yes, sir.

Q. I direct your attention to Exhibit No. 15 which the reporter has marked and I ask you to tell us what that picture represents.

A. That is a 1957 Chevrolet Bel Air sports sedan.

Q. Will you look at Exhibit No. 16 marked for identification and tell us what that is?

A. A 1957 210 Townsman four-door, six-passenger station wagon.

Q. Look at Exhibit No. 17 and tell us what that picture is?

A. That is a commercial cab with box, half-ton job.

Q. Mr. Lynch, do those represent the products manufactured by your company?

A. They do.

Q. Specifically by the Chevrolet Division of your company?

A. Chevrolet Motor Division.

Q. And are those products manufactured in California?

A. They are.

Q. And what are the locations of your operations in California?

A. Van Nuys, California, and Oakland, California.

Q. Mr. Lynch, you say that these pictures of various models are representative. Could you give us any idea as to how many variations there are in the models that you produce?

A. Well, there are so many of them, I wouldn't attempt to even tell you. In our passenger line we have our Bel Air line, we have the 210, we have the 150. Trucks, we have all kinds of trucks with all kinds of options. To tell you how [fol. 302] many, I wouldn't want to.

Q. Have you any idea how many color combinations you have on your automobiles, that are available to the public?

A. Numbers, I can't tell you, but there are many, many.

Q. Would it run into the hundreds?

A. Oh, yes, I would say yes.

Mr. Jacobson: Did you say colors?

Mr. Frizzell: Color combinations. You see, people are very particular today about the colors they buy in their automobiles.

Mr. Jacobson: I didn't know whether you were advertising or what.



By Mr. Frizzell:

Q. Mr. Lynch, in these representative models of automobiles that you have shown by Exhibits 15 and 16 and 17, are there various mechanical options that you can get in these cars?

A. Yes, sir.

Q. Could you give us any idea as to how many mechanical options there are in your line of automobiles?

A. Well, in the passenger line we have power steering, power brakes, air conditioning, all sorts of things like that.

Q. A customer can buy all those on one car or part on a car, through the various combinations of those units that are on an automobile, depending upon the customer's choice, isn't that right?

[fol. 303] Q. Mr. Lynch, I hand you what the reporter has marked Exhibit No. 18, and will you tell us what that exhibit represents?

A. That exhibit represents the location and the normal plant area of the Chevrolet assembly plant system.

Q. What are the named designations on this map? What are these named designations? Are they the location of what?

A. Of the assembly plants.

Q. And these various shaded areas represent what, Mr. Lynch?

A. Their normal shipping area.

Q. From what?

A. From the assembly plant.

Q. The name of the assembly plant located in that particular shaded area, is that right?

A. Right.

Q. Mr. Lynch, do these plants confine themselves just to the assembly of new automobiles?

A. They do.

Q. Where do they get their materials to assemble the automobiles?

A. The major component parts come from the Great Lakes region.

Q. And they are shipped to these various assembly plants by what mode of transport?

A. By rail-carload.

Q. Directing your attention particularly to Oakland and Los Angeles on this map, is that a rail carload delivery? [fol. 304] A: Yes.

Q. For these parts?

A. Yes.

Q. Mr. Lynch, would you tell us what your duties and responsibilities are, as the traffic director of Chevrolet?

A. Well, I administer the transportation and traffic affairs of the Chevrolet Motor Division, and also set its transportation policy.

Q. Do you have anything to do with providing your various plants around the country with adequate transportation service?

A. I do.

Q. Do you or do you not deal directly with transportation companies for that purpose?

A. I do.

Q. Do you, as a matter of fact, set the transportation policies of your company?

A. I do.

Q. Now, who carries out these policies?

A. Traffic managers operating at our plant locations.

Q. And who are the traffic managers, Mr. Lynch, here in California?

A. George D. Cron at Oakland and G. R. Lilinthal at Van Nuys.

Q. Are those gentlemen here with you today at this hearing?

A. They are.

Q. Mr. Lynch, what is the policy of your company in the [fol. 305] delivery of new automobiles from these various assembly plants?

Mr. Jacobson: I object to "various assembly plants" as not being involved in this proceeding. There is a number all over the United States, as shown on this exhibit.

Mr. Frizzell: I submit, Mr. Examiner, that this is a relevant question that the witness should be allowed to answer.

Exam. Linn: The witness may answer.

By Mr. Frizzell:

Q. How do you deliver your automobiles from your various assembly plants?

A. By rail and contract motor carrier.

Q. Mr. Lynch, what is the present distribution of your automobile traffic as between the railroads and your contract carriers?

Mr. Handler: Just a moment.

By Mr. Frizzell:

Q. I am talking now about your national picture.

A. Our national distribution via rail service-truckaway is 83 per cent truckaway and 17 per cent rail.

Q. Mr. Lynch, what is the percentage distribution as between the truckaway operation and railroad operations here at your California plants? First, let's take Oakland.

A. Oakland is 54 per cent truckaway and 46 per cent rail.

Q. And what is the fact with respect to the Van Nuys plant?

A. That is 77 per cent truckaway and 23 per cent rail.

Q. Without mentioning the Van Nuys plant, that is the Raymer railroad designation, is it not?

[fol. 306] A. That is the Southern Pacific designation, that is the way they refer to it.

Q. When reference is made to Melrose, that is with respect to the Oakland designation?

A. Yes.

Mr. Bienenman: These questions and answers as to percentages, are you talking simply about numbers of cars without relation to mileage or anything else?

Mr. Frizzell: Number of automobiles.

By Mr. Frizzell:

Q. These percentages you just gave us are percentages relating to the number of automobiles moved by railroad or by your contract carrier trucks?

A. Automobiles, passenger cars and trucks.

Q. Mr. Lynch, you say that your truck distribution from

these various assembly plants is known as a "contract carrier trucker operation."

A. That is right.

Q. How long have you used that form of transportation from your assembly plants?

A. Beginning with the 1934 model, it was customary prior to that time to permit dealers and other agencies of theirs—

Mr. Jacobson: Just a minute. I want to object to testimony concerning what happened 25 years ago. It's certainly not germane to any issue in this proceeding on the West Coast. I am a little wrong in my years. It's 20 years ago.

[fol. 307] Mr. Frizzell: I think it is, Mr. Examiner. Do you want me to tell you why or do you want the witness to tell you why?

Mr. Jacobson: I am objecting.

Mr. Frizzell: I think the history of this operation is very important.

Mr. Jacobson: The issue here is whether there is a need for the establishment of a new carrier, in the face of existing carriers being in the field at the present time.

Mr. Frizzell: I will agree with you that that is the issue.

Exam. Linn: The witness may answer, but I suggest that he be as brief as possible with respect to the early period.

By Mr. Frizzell:

Q. Go ahead, Mr. Lynch. Tell us the story.

A. We were given this job by our management at the beginning of the 1934 model year and it was taken out of our sales department because we had dealers coming in with all sorts of drivers and causing nothing but confusion at our plant locations, and the traffic department was given this job by a Chevrolet management to go out and organize the distribution of our product via modes of transportation, rail and truckaway. At Tarrytown, for example, we had approximately 90 companies down there, and they were—Anchor Motor Freight at that point was organized and undesirables were weeded out and desirables were—

Mr. Jacobson: (Interrupting): This is certainly not germane to any issue here. What happened at Tarrytown [fol. 308] 20 years ago, before he went with the company in that capacity, is certainly not germane and is not going to benefit the record.

Exam. Linn: Will you reframe the question, Mr. Frizzell?

Mr. Frizzell: I am merely trying to show what the situation was that impelled General Motors to go to this form of transportation, namely, contract carriers. We had a reason for it and I am just asking Mr. Lynch to give us the reason, and it will be very brief.

Exam. Linn: Very well.

A. Well, at that time that was the reason for it. These companies were organized, and we had them adjacent to properties that were ours, in order that they become a part of our distribution system, in order to properly service our dealers. These contract carriers are dedicated solely to Chevrolet's business. We keep them fully informed on our projections months in advance, so that they will have a complete knowledge of what to expect. And we—

By Mr. Frizzell:

Q. Let me just get in there now, Mr. Lynch. In 1934, then, you took control of this traffic for Chevrolet?

A. Right.

Q. What other important change did you make at that time, besides just taking control of the traffic, with respect to the method of delivering your cars?

[fol. 309] A. Will you rephrase your question, Mr. Frizzell?

Q. Did the dealers drive your cars from the plants?

A. Yes.

Q. What did you do about that?

A. We eliminated the dealer coming in for cars.

Q. Then did you continue to drive new automobiles?

A. No.

Q. What change did you make in that respect?

A. We truck them.



Q. Is that your policy today?

A. It is.

Q. These contract carriers, Mr. Lynch, which were formed back in 1934 and 1935 to take on this business, are those contract carriers still serving your company?

A. They are.

Mr. Handler: I object on the ground it's immaterial. Let's get down to California.

Exam. Linn: Objection overruled.

By Mr. Frizzell:

Q. Mr. Lynch, I direct your attention to the plants at Oakland and at Los Angeles. Is the contract carrier which was serving your plant in 1935 still serving your plants there?

A. Correct, it is.

Q. What company is it?

A. PMT.

[fol. 310] Q. Since you have these past 20 years followed the policy of using a single contract carrier at these plants, has that proved to be a satisfactory arrangement for your company?

A. It has.

Q. Mr. Lynch, could you give us a few reasons why you used this so-called contract carrier form of operation?

A. Well, with our volume of, distribution of the volume business that we are in requires an even flow and an efficient flow of our product to our mode of transportation, such as truckaway, and these properties that our truckaway operators have are adjacent to our property. We also keep them fully informed of schedules and our projection for two or three months in advance of our actual production so that they will know and have an exact idea of what is required of them and how the volume will be coming to them. We also keep them fully informed as to any model changes that occur, that require some modification of the equipment in question. Just recently there is a change in the '58 model that is going to take place, that the clearance of the job on the present equipment is going to be quite affected, and we have already had our operators at our proving

grounds in Milford, Michigan, for test loading, we have had subsequent meetings with them as to what was required of the equipment, and the thing is still under negotiation, but it's something that has to be handled immediately, because the equipment has to be modified and our [fol. 311] engineering department has to do something to make the truck fit the job, something is going to have to be done to get it taken care of before we go into the new model. All of those things, in our opinion, make a satisfactory arrangement for Chevrolet in properly disposing of our production.

Q. Did you have representatives of PMT come in and see this new 1958?

A. Yes.

Q. Did you have your other contract carriers in at that time, too?

A. Yes.

Q. Mr. Lynch, do you customarily relay to these trucking companies information with respect to your model changes and keep them abreast of that fact, too?

A. Yes.

Q. Mr. Lynch, could you tell us why you are asking Pacific Motor Trucking Company to extend its operation into this territory here on the West Coast?

A. We are in need of truck transportation. The trend is towards trucking and rail is being eliminated gradually. We do not have available to us at Oakland and Van Nuys a complete coverage such as we have at our other plant locations. We have points out here on the Pacific Coast that are off-railhead. We have a case, if I can cite for the moment, down at St. George, Utah, which is some-sixty [fol. 312] miles from a railhead, where that fellow requires truck service, and we are unable to give it to him because of the restricted rights that our carrier now serving us has. So recognizing the trend, I went to the Southern Pacific people this year, early this year, and told them that it was my understanding that Southern Pacific had a policy that they would not truck to rail points off their rail line.

Mr. Bieneman: May I interrupt there?

Did you mean by "this year" 1957?

The Witness: I meant '56, Walter. That was, when we were out here on our Arizona rights.

A. (Continuing) I served notice to Mr. Peoples.

Q. Who is Mr. Peoples?

A. Vice-president in charge of traffic for the Southern Pacific Railroad. I served notice on him that we were not concerned any longer with the Southern Pacific's policies of not trucking to points off their railroad, that we were in need of a trucking service, and that if PMT could not service the account and give us complete coverage at the Van Nuys and Oakland plants, that then we would have to make other arrangements for the service. And I requested him to make application to the Interstate Commerce Commission to give us that coverage, and he did so at our request.

Q. Directing your attention, Mr. Lynch, to Exhibit No. 18 and the various shaded areas which you testified represented [fol. 313] sent shipping areas of the respective assembly plants indicated thereon, do those assembly plants have available to them a contract carrier service throughout those shipping territories?

A. Yes.

Q. And this territory out here is the only one in the national operation that doesn't have that—

Mr. Jacobson: I object to the leading and suggestive questions, which every question has been.

Exam. Linn: I believe the matter indicated in the question is already of record.

Mr. Frizzell: I will withdraw it.

By Mr. Frizzell:

Q. Have you had any pressure put on you by your management with respect to your transportation services out here?

A. I have.

Q. What is their attitude?

A. Their attitude is that they want complete trucking coverage, and "We have to get it, because we are going to go into the trucking business if we don't."

Q. You mentioned this dealer at St. George. Have any other dealers complained?

A. Boise, Idaho.

Mr. Jacobson: Pardon me. Did you end that statement by saying "we are going in the trucking business"?

Exam. Linn: Read the answer.

[fol. 314] (The reporter read as follows:

"Answer: Their attitude is that they want complete trucking coverage, and we have to get it, because we are going into the trucking business if we don't.")

By Mr. Frizzell:

Q. Just tell us what you mean by that.

A. I mean that we are going to have trucking services available to us on the Pacific Coast so that we can truck automobiles to our customers, the dealers.

Q. When your management tells you that you have a requirement, it's up to you to get that requirement, is it not?

A. It is.

Q. Mr. Lynch, can you give us any further reasons why you prefer to have available to you a truck operation on a contract carrier basis from these two California plants?

A. Well, it's consistent with our policy, and we feel that a contract carrier dedicates his service solely to us, he is not holding out to people in general, and we have assurance, as a contract carrier serving us with a contract, that we have assurance of delivering our automobiles without interruption, that he does not hold himself out to the public in general, and thereby we have that guarantee.

Q. Mr. Lynch, your Exhibit No. 18, you testified represents the shipping areas of your various plants. Is it ever necessary to ship beyond those normal shipping areas?

A. It is.

[fol. 315] Q. Is that a fact out here in California?

A. It is.

Q. Mr. Lynch, can you reach any of this territory that is involved here today from your Kansas City plant?

A. Yes.

Q. Looking at your Exhibit No. 18, could you give us, for the record, what states or parts of states—

A. Well, there is New Mexico, Utah, and Idaho.

Q. So you could make a delivery from your Kansas City plant by truck to at least some of the points that are involved in this application?

A. Yes.

Q. Is it your desire to make deliveries from the Kansas City plant into that normal delivery area of your California plants?

A. No.

Q. Why not?

A. Well, the Los Angeles and Oakland plants represent quite an investment and they are to supply all of the production in the normal area that they are lined up for, and to start depriving it of that area would merely destroy the economics of the plan.

Q. If you diverted any of your production from the California plants over to Kansas City, what effect would that have on your material distribution, parts and material?

Mr. Jacobson: I object to that as incompetent, immaterial [fol. 316] and not germane to any issue in this case.

Exam. Linn: Overruled.

By Mr. Frizzell:

Q. What effect would withdrawing the production of California plants to those plants have upon the production of parts and materials to those plants?

A. To give you an example, if it was necessary for us to transfer St. George, Utah, over to Kansas City, and supply it from Kansas City, and points comparable to that, if we are deprived of the trucking service to reach them, it means that the inbound component parts, the engines, the axles, the sheet metal, the transmissions, et cetera, will be reduced to that extent. Transferring St. George, Utah, over to Kansas City means that in order to reach it, there is various points intermediate to it now that are on rail out of Kansas City that would have to move truckaway because we would be travelling through that territory and, in order to give the trucking company substantial volume, or adequate volume, to reach St. George, we would have to



give him those intermediate points and the railroads would lose that business.

Mr. Handler: I move to strike the answer on the grounds it's based on a non-existent foundation. I haven't heard the witness say yet there had been a change to St. George or even that one was contemplated. You are building up a strong man to knock him down.

Exam. Linn: I understood the question to be limited to [fol. 317] parts and supplies.

Mr. Frizzell: He probably went further than he had to go on the answer. The answer that I was seeking, I think, he gave. I must admit to counsel that there is no evidence that there are any shipments from Kansas City to St. George, Utah, but the witness has testified that that service is available to him if he cares to use it, and if he uses that service, he has given us facts as to what the results from that diversion would be.

Exam. Linn: Perhaps our record is adequate as it now stands.

Mr. Frizzell: I think it is.

By Mr. Frizzell:

Q. Mr. Lynch, why is it that you prefer—well, let me ask you this: Do you as a matter of fact prefer the trucking operations to the rail operations in the delivery of your new automobiles?

A. Absolutely.

Q. Why?

A. It's superior.

Q. In what respects is it superior?

A. Well, we can deliver a better-quality automobile, there is less "manhandling." And certainly in these small communities their facilities are such that a small dealer has to close his business up for half a day to go down and unload a carload of automobiles, and the transit time, everything about it, superior service and we are coming to it.

[fol. 318] Mr. Cronon: Mr. Examiner, I ask that that answer be stricken on the ground that it's too general, it doesn't specify any particular point, any particular railroad service, and it does not leave us in a position to properly

cross-examine this witness as to what facts, if any, underlie his statement.

Mr. Frizzell: I think the answer was responsive.

Exam. Linn: Motion denied.

By Mr. Frizzell:

Q. Mr. Lynch, these other contract carrier operations from the plants around the country, do they have drive away operation in their authorities?

A. Yes, they do.

Q. I think you did testify that your policy is truckaway?

A. That is right.

Q. Why do you ask them to get driveaway authorities?

A. We are producing a line of commercial vehicles, big trucks, some of them have platforms and stakes on them which just don't lend themselves to trucking, and in those cases we permit them to drive them.

Mr. Frizzell: That concludes my direct.

Cross examination.

By Mr. Cronon:

Q. Mr. Lynch, is it true that your division of General Motors has only three assembly plants in California, the ones that have been mentioned here today?

A. No; Chevrolet has only two, Oakland and Van Nuys.

Q. Could you tell us how long ago those assembly plants [fol. 319] were established in California, approximately?

A. Oakland, 1914; Los Angeles, 1948.

Q. What was the first one? I didn't get that.

A. Oakland, 1914 and Los Angeles, 1948.

Q. Has your company followed a policy of decentralizing the assembly of its automobiles?

A. Just what do you mean by that question, Mr. Cronon?

Q. I mean, there was a time when most of your cars were manufactured and assembled right in the state of Michigan, isn't that right?

A. Oh, we have had assembly plants for a good many years. I could give you the—

Q. (Interrupting) Let me put it this way: Isn't it your policy now to distribute your cars from a point which is more centrally located to the distributors whom you want to receive your cars?

A. No, the exhibit here represents our method of distribution, this Exhibit No. 18.

Q. Are you distributing any cars which are assembled in your Detroit Chevrolet plant at all, in the state of California?

A. No, we have no assembly plant at all in Detroit.

Q. Your idea is to distribute them from the state of California?

A. That is correct.

Q. Was there a time when Chevrolet cars moved via rail from points east of the Mississippi?

[fol. 320] A. East of the—to this territory?

Q. Yes.

A. Well, at the conclusion of World War II, when we were converting our plants back from wartime production to automobile business, St. Louis was one of the first plants to get going, and we did have distribution—and we also produce a model at St. Louis called the "Corvette" which we ship out here rail.

Q. Your regular Chevrolet model, however, is not shipped from St. Louis, is it, to California?

A. No, not the regular line of cars.

Q. It may be, Mr. Lynch, that the record indicates that the Southern Pacific Railroad does all of the hauling from your California assembly plants. That is not a fact, is it, as to points, for example, on the Great Northern Railway?

A. Southern Pacific doesn't do any hauling for us.

Q. The railroad?

A. No.

Q. Then, do you mean that out of your California plants to points on the Great Northern, that they move via PMT?

A. No, no. Are you talking about the Southern Pacific trucking our automobiles or railroading them?

Q. Via rail.

A. Oh, yes, Southern Pacific, on all of our volume of business out of here, they ship rail.

[fol. 321] Q. They ship from both plants?

A. That is right.

Q. On shipments which are routed, for example, Santa Fe-Western Pacific-Great Northern to a point like Kalispell, Montana, the Southern Pacific Railroad would only receive a switching haul?

A. That is right, if the Santa Fe received the traffic here it would be only reciprocal switching.

Q. On your traffic moving to southern Pacific Coast territory, to points not served by Pacific Motor Trucking Company, that moves all via rail, doesn't it?

A. Yes.

Q. If I understand your testimony correctly, if this application is granted, you will divert all of the transportation of Chevrolet automobiles and trucks from the present rail movement to movement via Pacific Motor Trucking Company?

A. I didn't say that. I said, what I said was, that we have an immediate need for this service and we will convert immediately a substantial amount of this business, and I said also that the trend is for trucking automobiles and I can see that we are going to go someday a hundred percent truckaway, and I am getting ready for it.

Q. The way you stated it, as I remember it, was that the rail transportation is being eliminated gradually?

A. That is correct.

Q. Now, in-respect to this particular application, what do [fol. 322] you mean by "gradually"? Would it start out by diverting 25 per cent and then diverting 50 per cent to PMT and then 75, or how would you say it?

A. Well, we would most certainly start trucking into Arizona and Utah and Idaho and we would start moving into Oregon via truck and we would gradually—

Q. Eventually—

Mr. Bieneman: I don't think you got a complete answer there, Counsel, if you wanted him to finish it. He said "We would gradually" and then the answer wasn't finished.

Mr. Cronon: I was going to cover that in my next question.

By Mr. Cronon:

Q. Then it follows, does it not, Mr. Lynch, that eventually, within the scope of this particular application, at least, all of the traffic which is now moving via rail would move via Pacific Motor Trucking Company?

A. That is right.

Q. I take it that in order to get Pacific Motor Trucking to file this application you had to give them some sort of a commitment as to the traffic that you would put on their truck lines. Now, let me ask you this: I take it that you have agreed with PMT that you will enter into a firm contract whereby you guarantee them a certain amount of tonnage within a given period of time?

A. Oh, yes. It would be strictly legal.

Q. Being head of the traffic department of the Chevrolet [fol. 323] Division, I take it that you, yourself at least, have a pretty good idea of how much tonnage you are going to guarantee in the first contract which is executed between the Chevrolet Division and the Pacific Motor Trucking or do you have an idea?

A. At the moment?

Q. Yes.

A. No, I don't.

Q. So am I to infer from that, Mr. Lynch, that you have given Pacific Motor Trucking Company no specific idea of the amount of tonnage that you will offer them if the application is granted?

A. Well, I gave them the same understanding that I am testifying here to, that we are gradually going into the trucking business.

Q. How about the number of cars, passenger cars?

Mr. Jacobson: Trucking business?

The Witness: I mean trucking service.

By Mr. Cronon:

Q. Have you told them how many automobiles during the first year of the contract you would ship via PMT?

A. No. That is just a matter of business relationship between the two of us.



Q. So that it could be, if the application is granted—and I will admit that it seems rather unlikely—that you might not give them any business during the first year if you didn't want to, is that correct?

The Witness: Will you ask that question again, please? [fol. 324] Mr. Johnson: If he is going to restate the question, I think he should reframe it.

Mr. Smith: It depends upon where you get the club on it.

(Last question read.)

A. If you are so sure it's not going to be granted, then we are just wasting a lot of time here.

By Mr. Cronon:

Q. I didn't say anything about it not being granted, I am just saying this, Mr. Lynch: That, assuming that the application is granted, you have not committed yourself to PMT to give them any particular amount of business, is that right?

A. I answered that by merely telling you that I have not made any commitments to PMT as to volume.

Q. In your own mind, do you have any idea as to what volume you may offer?

A. No, I have not. But we will sit down with PMT as soon as we get this permit, and we will gradually, in an organized business way, expand our trucking.

Exam. Linn: Could you give us any idea as to what the limits, high and low, might be, of the possible volume?

The Witness: Well, we are 54 per cent truck now and I would say that it would be easy to assume that we would start out and increase that to 75 per cent immediately, out of Oakland. I can see Van Nuys going practically a hundred per cent just as soon as we would tool up to it equipmentwise.

[fol. 325] Exam. Linn: That is a hundred per cent via motor vehicle?

The Witness: Yes.

By Mr. Cronon:

Q. Of course, that means that the Southern Pacific Company as a railroad would lose not only switch movements but long haul transportation, right?

A. That is correct.

Q. And the connecting railroads with Southern Pacific Company would stand to lose the same percentages?

A. That is right.

Q. Now, Mr. Lynch, at the present time, of course, General Motors Company ships parts and frames from which these cars are assembled from eastern origins to the California plants?

A. Yes.

Q. Would you state how frames and parts are moving to California at the present time?

A. Rail carload.

Q. One hundred per cent?

A. Yes.

Q. I understand—and correct me if I am wrong—that these parts move mostly over routes other than the northern transcontinental railroads, is that right?

A. Well, our route to Oakland is through the Omaha gateway.

Q. Yes?

A. Our route to southern California, Van Nuys, is through Tucuman in connection with the Rock Island, and [fol. 326] also the TP through El Paso-Southern Pacific. A portion of that business also moves via, to both plants, via the Santa Fe.

Q. Would you continue to ship parts and frames via rail, as far as you know, in the future?

A. Yes.

Q. And Southern Pacific Company would participate in the movement of frames and parts to the assembly plants?

A. Yes.

Q. As a common carrier railroad?

A. Yes.

Q. And your proposal here, then, is to use the contract carrier subsidiary of Southern Pacific Railroad Company on the movement of the completed product out?

A. Yes.

Q. I take it, Mr. Lynch, that the movement of completed product out of the assembly plants under this proposal would depend upon a satisfactory rate from PMT, would it not?

Mr. Frizzell: I object sir. That is improper cross-examination. We didn't go into any question of rates on direct.

Exam. Linn: Objection overruled.

Mr. Cronon: Would you like that read, Mr. Lynch?

The Witness: Yes, will you repeat that, please.

(Last question read.)

A. Whatever PMT's rate to us for the service rendered would be, we will gladly pay it.

[fol. 327] By Mr. Cronon:

Q. Then you would have no objection, I take it, to using even present common carriers, as far as the rate level is concerned, I take it?

A. I am not interested in common carriers.

Q. Then, you have no complaint about their rates?

A. I know nothing about their rates.

Q. I say, you have no complaint?

A. As far as I am concerned, no.

Q. Is it usually your custom as a traffic manager, before moving a volume of traffic from one carrier to another, to determine what the cost of that transportation is going to be?

A. Oh, yes.

Q. It is?

A. Yes.

Q. That is not voluble. I don't think it's getting in the record. I mean, you will have to speak out loud.

A. Yes, cost is a factor with these things.

Q. Would there be any exception in this case, or will you also enter into a discussion, Mr. Lynch, of what this transportation is going to cost you under the PMT proposal?

A. We are out, we want to have the service, that is the primary consideration, and if the service via PMT that we require produces a greater cost than the rail rate, we

will use PMT. This service is paramount. We are in a highly competitive market, and the delivery of these auto-  
[fol. 328] mobiles to our customer, the dealer, is very, very important.

Q. You pass along to your customer eventually, anyway, the cost of the transportation, the person who buys the car eventually pays the cost of the transportation, doesn't he?

A. I am not here to discuss those economics.

Q. I am asking you that.

A. I can't answer that.

Q. You don't know whether General Motors or Chevrolet assumes the cost of transporting a car or whether the customer eventually pays it, is that right?

A. I am sorry, but the destination charge that we make to our dealer is the charge that the customer pays.

Q. And that is a delivered charge?

A. That is a destination charge, which is based on Chevrolet's freight cost, and that is as far as I can go into that now, because that requires somebody else besides me.

Q. But isn't it pretty generally known, Mr. Lynch, that when you buy an automobile you pay for the cost of putting that in front of your house, that is, the customer's house?

A. I am not going into that.

Mr. Johnson: I object to going further into this type of cross-examination.

Mr. Frizzell: We are getting nowhere with this type of cross-examination.

A. I am not going into—

► [fol. 329] Exam. Linn: The witness may answer.

A. That is a matter of our pricing, and I am not qualified to discuss our pricing policies.

By Mr. Cronon:

Q. You are the head traffic man for the Chevrolet Division?

A. That is right.

Q. The gentlemen you spoke of as being in the room here are your subordinates?

A. Yes. The traffic managers at Oakland and Van Nuys.

Q. And they work under you?

A. Yes, sir.

Q. If I am wrong, Mr. Lynch, I wish you would tell me right now, but I am under the impression, from your testimony that you are not in a position to tell this Commission what type of a contract you would enter into with PMT as to tonnage or as to price, is that right?

A. Well, I thought I had answered that.

Mr. Frizzell: I object, Mr. Examiner. The type of contract is not a matter germane to this issue. The regulation of the Commission requires that a contract carrier contracting for a shipment enter into a bilateral contract which contract must be filed with the Commission. It's not a subject properly of this hearing.

Exam. Linn: The question attempts to summarize the record. I would prefer that it be framed in other language, [fol. 330] if it would be possible to do so.

Mr. Cronon: I will reframe it, Mr. Examiner.

By Mr. Cronon:

Q. Mr. Lynch, can you tell us, can you tell this Commission, what provision would be put into any contract with Pacific Motor Trucking Company, assuming this application is granted?

Mr. Frizzell: I object to the question as not germane to the issues before the Examiner.

Mr. Cronon: I haven't even completed it.

Exam. Linn: Will you complete the question?

By Mr. Cronon:

Q. (Continuing) With respect to tonnage which would be given to PMT or with respect to the cost of transportation?

Mr. Frizzell: The question was asked and answered some time ago, Mr. Examiner. I object on the grounds that it's repetitious.



Exam. Linn: I believe it is, too, but I will ask the witness if he can add anything to what he has already said on the subject.

A. The only way I can answer that is to say that we will enter into a contractual arrangement with PMT that meets with the requirements of the Interstate Commerce Commission and all the legal phases of it. Whatever that requires, we will do.

By Mr. Cronon:

Q. You don't know anything about detail on that as of now, is that correct?

[fol. 331] A. That is correct.

Exam. Linn: Well—

Mr. Cronon: That is all I have on that.

By Mr. Cronon:

Q. Mr. Lynch, you have discussed with several railroads the PMT application, have you not, before it was filed and even after it was filed?

A. I didn't discuss the PMT application with any railroads.

Q. Have you ever discussed this matter with any traffic representative of the Great Northern Railway Company?

A. No.

Q. What I have in mind, Mr. Lynch, and this might refresh your memory—

A. I wish it would, if I spoke to somebody.

Q. Has General Motors made representations to any railroad that this highway service would be used only when necessary and that it would be used in very small volume?

A. No. I can't imagine who it would be. It wasn't me, I know.

Q. Are you familiar with an offer by certain railroads who are protesting this application here today to enter into a joint arrangement whereby they would apply for trucking rights along their own roads and within their own territories in a joint arrangement with Southern Pacific Company?

A. No, I am not familiar with that.

Q. You are not at all familiar with that?

[fol. 332] A. No.

Q. Have you ever heard of such a discussion?

A. No, I haven't.

Q. Has your company ever told Pacific Trucking Company and Southern Pacific Railroad Company that they would never consider a joint arrangement between railroads on such a proposition as that?

A. You mean—

The Witness: Repeat that question, please.

(Last question read.)

Mr. Frizzell: I submit, the question isn't clear, Mr. Examiner. He is talking about "they", "they" being who?

The Witness: I am a little confused on that.

Mr. Cronon: Could you go back to the question before that, perhaps, and read that?

The Reporter: Yes.

(The reporter read as follows:

"Question: Are you familiar with an offer by certain railroads who are protesting this application here today to enter into a joint arrangement whereby they would apply for trucking rights along their own roads and within their own territories in a joint arrangement with Southern Pacific Company?")

Mr. Jacobson: You have in mind the railroads you represent?

Mr. Cronon: Yes.

A. No, I don't know.

[fol. 333] By Mr. Cronon:

Q. Has your company had in mind a service which involved, for example, Pacific Motor Trucking rights from one of your plants in California to Portland, thence trucking rights owned by the Spokane, Portland & Seattle Railroad Company to Spokane and Great Northern Railroad Company from Spokane to Kalispell, Montana?

A. We wouldn't be interested in that service.

Q. You wouldn't be interested in that service?

A. We want through service, a one-line haul.

Q. You want through service, whereby you would enter into a contract, that is all you want?

A. That is right.

Q. You do not want to use the presently certificated common carriers?

A. That is right.

Q. And your policy will go so far eventually as to give up the rail common carriers?

A. Oh, yes.

Q. Mr. Lynch, in your negotiations with Pacific Motor Trucking Company on the hauling of completed automobiles out of the assembly plants, would you look for any favoritism as far as rates are concerned while at the same time paying the general common carrier published rates on parts moving into California?

A. Absolutely not.

Q. Are you now distributing any Chevrolet cars in the [fol. 334] North Pacific Coast area which receive a prior rail haul and are distributed by a truck line?

A. No.

Q. Have you ever heard of Transport Storage & Distributing Company?

A. Is that the gentleman's name, the gentleman's name who runs that, is it Tarte?

Q. Tarte.

A. Tarte, yes.

Q. And he is the distributor of Chevrolet cars in that area, is he not?

A. I don't know.

Mr. Cronon: That is all.

Cross examination.

By Mr. Burchell:

Q. How many dealers do you have at St. George, Utah?

A. I don't know.

Q. How many dealers do you have at Boise, Idaho?

A. I don't know.

Q. Do you have more than one at each point?

A. I don't know.

Q. You said that you could reach Utah and Idaho from the Kansas City plant. Do you ever ship any cars from Kansas City to that territory?

A. We have.

[fol. 335] Q. By what means?

A. We have shipped to this area out of Kansas City at various times, which we call out-of-area shipments, and they have moved rail.

Q. Is that a sporadic movement or does it cover quite an extensive period?

A. No, it's sporadic.

Q. Have you ever shipped any cars from the Los Angeles area back into the Kansas City plant area?

A. Sometimes.

Q. And was that sporadic or—

A. Sporadic.

Q. You said if this application were granted you would start the movement of automobiles by truck to Arizona, Utah, Idaho and Oregon. Have you attempted to move any automobiles by truck to Oregon by Pacific Motor Trucking Company?

A. No.

Mr. Burchell: That is all.

Cross examination.

By Mr. Andersen:

Q. In the event the application should be granted, Mr. Lynch, and some of the dealers of your Chevrolet products nevertheless requested of the various assembly plants that the automobiles that would be sent to them should be sent by rail, would the General Motors people acknowledge and honor that request at all?

[fol. 336] A. Yes, we would.

Q. So that your dealers, then, would be able to control the routing, is that correct?

A. No, they wouldn't control it. They are our customers. We treat them as such, and we would consider their requests.

Q. Could you give me any indication, Mr. Lynch, as to what extent that consideration would go?

A. Well, if the dealer at Salt Lake City wanted rail and we were trucking them, and we were out of the rail business one hundred per cent and had no loading facilities available to our plant and we had no box car supply, we would truck them.

Q. So, then, in keeping with what you have testified, then, eventually you intend to get completely out of the railroad transportation of new automobiles, and at that point, at least, you would not honor the requests of the dealers, is that correct?

A. We wouldn't have the facilities. I am merely testifying here as to what we see ahead of us as the trend.

Mr. Andersen: That is all. I have no further questions.

Cross examination.

By Mr. Jacobson:

Q. Mr. Lynch, as I understand it, the traffic manager, Mr. Lilinthal, in Los Angeles and your traffic manager in Oakland are directly under you. Is that correct?

A. That is correct.

[fol. 337] Q. Insofar as policy is concerned, they echo your desires, is that correct?

A. That is correct.

Q. So that insofar as their testimony is concerned, it's merely a repetition or an evaluation of what you have told them to testify, is that correct, with respect to the policy of the company?

A. I didn't tell them to testify to anything.

Q. I mean, what they would testify to as to the needs of the Chevrolet assembly plants is dictated by you, as the general manager?

A. The policy.

Q. How long has that been in effect?

A. The policy?



Q. That supervision of policy.

A. It's always been in effect.

Q. Was it in effect in 1955?

A. It was.

Q. When did you determine that there was an immediate need for trucking service in the area in the western states out of the Van Nuys and Oakland plants?

A. We recognized it in the last few years.

Q. Has your policy changed in the past two years with respect to your desire to ship via truck to the customers?

A. It's still our desire to truck to the dealer.

Q. I say, has your policy changed?

[fol. 338] A. No, it hasn't.

Q. And the policy that you adopted—and, by the way, you said you were out here in the July hearing of 1956, is that correct?

A. Yes.

Q. You were present in the court room when Mr. Lilinthal was testifying, weren't you?

A. Yes, I was.

Q. Do you recall me asking the question: "Mr. Lilinthal, assume that the Commission should see fit to deny this grant of authority"—we are now relating to the grant of authority to southern Arizona—"are you going to continue to ship by rail or are you going to use other means of transportation?"

"Answer: We will continue to ship by rail."

A. I heard that.

Q. Have you changed your policy since?

A. He testified that he was going to continue to ship by rail.

Q. Wasn't he echoing your statements?

A. He testified at that time that he would continue to ship by rail. I changed his ideas and policies since that to the policy that we want truck.

Q. Assuming that this application is denied and there are existing facilities available to meet this immediate demand you have had for two years, would you utilize those facilities?

A. That are available out here?

[fol. 339] Q. Yes.

A. No.

Q. In other words, irrespective of what happens, if you don't get PMT trucking service, you are going to find another method of transportation?

A. Right. We are going to truck them.

Q. Does General Motors propose going in the trucking business themselves?

A. I don't know.

Q. Are you familiar with the existing contract carriers who have been available to you?

A. No.

Q. Did you make any investigation—

A. (Interrupting) No.

Q. Wait until I ask the question, please.

A. Pardon me, Mr. Jacobson. I thought you were finished.

Q. I expected a "No," answer. But let me ask the question, for the purposes of the record.

A. I am sorry, I thought you were finished.

Q. I will stipulate, I might ask you some that you will answer "Yes."

A. If the answer is "Yes," you will get "Yes."

Q. Now you have thrown me off.

Mr. Bieneman: Congratulations, Bill, if you can throw him off.

[fol. 340] By Mr. Jacobson:

Q. Referring to the testimony by Mr. Lilinthall, I am referring to the page 118 of the transcript of July 10, 1956, I went on further and said, "Notwithstanding the fact that there are existing facilities available?" And he said, "We can't use them because of our plant characteristics that will not permit any volume to go out the receiving gate." Is that the reason you won't use any other carrier or do you have other reasons?

A. I just testified to all the reasons we want a contract carrier.

Q. Well, I just asked you.

A. If you want me to go back and repeat all of that, I will do it.

Q. You have the power to request the PMT and Southern Pacific to let another carrier use your receiving gate, haven't you?

A. If we have—

Q. (Interrupting) Just answer my question.

A. I am going to answer it my way, not the way you want it. I am merely saying that if we engage another carrier to serve us, we would expect that carrier to have the proper facilities to serve us.

Q. Has it come to your attention since prior to and subsequent to the hearing of July 10, 1956, that certain Chevrolet dealers in southern Arizona, that are on points served by the Southern Pacific, have been solicited by truckaway carriers, has it come to your attention that they have requested [fol. 341] truckaway over existing facilities and haven't been able to get it?

A. Yes. That is what we are trying to get them now.

Q. Didn't they tell you that trucks come in every day to their competitors across the street, trucks come in from Los Angeles, and they want to get that service, too?

A. No, they didn't tell me that detail.

Q. Do you know that that is a fact?

A. No.

Q. Why won't you use the existing facilities if there is an immediate need for truckaway service?

A. Because we don't want to use common carriers.

Q. Do you know how many contract carriers there are running between Los Angeles and Arizona?

A. No.

Q. Do you know that there is any?

A. No.

Q. Do you know there's one there that—

A. (Interrupting) Nobody has ever told me if there are.

Q. Hasn't your superintendent or your traffic man told you?

A. No.

Q. Did you know that there is one who hasn't had any business, he has rights and facilities, since Studebaker closed, and he is seeking your business?

A. No.

Q. You didn't know of that?

[fol. 342] A. No.

Q. You made no investigation at all of existing—

A. (Interrupting) No.

Q. Please wait until I ask the question to answer, or to give a "No" answer.

A. I am sorry.

Q. Have you been advised by your traffic manager in Los Angeles prior to coming to this hearing of the existing facilities between Los Angeles and the points you propose to have PMT serve under this application?

A. No, I haven't.

Q. Have you been advised at all with respect to the facilities offered by these companies?

A. No, I haven't.

Q. You testified that 77 per cent of your traffic out of Los Angeles, out of Raymer, at the present time is truck-away and 23 per cent rail. That figure 77 per cent consists exclusively of intrastate traffic, doesn't it?

A. Yes, sir.

Q. The other 23 per cent, which is rail, you intend to divert from rail and move via truck, is that correct?

A. Yes, I believe there would be a diversion to that extent.

Q. Do you know what percentage of that 23 per cent goes into Arizona?

A. No, I haven't those figures with me.

[fol. 343] Q. You testified that when you came out here in July you told the Southern Pacific that regardless of the agreement they had with other railroads, they had to offer a service to you, and over-all service, or you would take the business away. What agreement did they—

A. (Interrupting) Well, I—

Mr. Frizzell (Interrupting): I object to that question. He did not testify about any agreements.

Mr. Jacobson: May we refer to the record? I made a note of it.

Mr. Frizzell: He did not testify as to his understanding about any agreements between railroads.

Mr. Jacobson: I made a note of it at the time.

Mr. Frizzell: You made the wrong note.

Mr. Jacobson: I made a note here in 1956, when he was here in July, he told the Southern Pacific, I forget the man's name that—

A. (Interrupting) Do you want me to repeat what he said?

By Mr. Jacobson:

Q. Yes.

Exam. Linn: Can you reframe the question, Counsel?

By Mr. Jacobson:

Q. Were you advised by Southern Pacific in 1956 that they had an agreement with other railroads that they wouldn't invade their territory, were you so advised by Southern Pacific in July 1956?

A. No.

[fol. 344] Q. What did you mean, then?

A. I testified, Mr. Jacobson, when he came out here in July, I had a conference with Mr. Peoples, Vice-president of traffic, of the Southern Pacific Company, and I told him at that time that I understood that the Southern Pacific had a policy where they would not truck to points off their railroad and that I was no longer interested in that policy of the Southern Pacific, that we wanted a complete truck service available to us at our plants on the Pacific Coast, in keeping with and consistent with our policy at other plants, and that if the PMT were not equipped to get that service for us we would have to go out and get it elsewhere, and that is what I testified to.

Q. When you made that statement you didn't know what, if any, service, authorized service, either contract or common—

Exam. Linn: (Interrupting) Let's make it factual.

By Mr. Jacobson:

Q. Are you familiar with the fact that the Santa Fe Railroad is seeking the right for truckaway service to



points in Arizona not served by the Southern Pacific out of Los Angeles?

A. No, I am not.

Q. If the Santa Fe had a truckaway service from Raymer to the points in Arizona not served by the Southern Pacific, would you give them any traffic?

A. No.

Q. Are all of these cars that transport Chevrolets [fol. 345] equipped with Evans loaders?

A. Yes.

Q. Approximately how many cars will be taken out of service if you convert the present rail tonnage to truckaway, that is, out of these two plants?

Mr. Frizzell: If you know, Mr. Lynch.

A. No, I do not know, and I think that we have a witness here who might be able to testify to that. I don't know off-hand.

By Mr. Jacobson:

Q. You testified concerning car shortages. Is there a car shortage at the present time?

A. I didn't testify about car shortages.

Q. Is there a car shortage at the present time to haul automobiles?

A. No.

Q. If these cars were removed from handling this traffic they would be available for transcontinental services, wouldn't they?

A. The cars themselves?

Q. Yes.

A. Yes.

Q. And that could tend to deprive some of the transcontinental truck carriers of some traffic they now enjoy via highways, couldn't it?

A. Could I answer you my way, please?

Q. Answer any way you want to, please.

Mr. Frizzell: Mr. Examiner—

[fol. 346] Mr. Jacobson: (Interrupting) Let him go.

Mr. Frizzell: I object to the question as improper cross-examination.

Mr. Jacobson: I think the purpose of the examination, as the proceeding goes forth, will be revealed. We will attempt to show that the removal of these cars, or the availability of these cars, will tend to create a condition that will have an adverse effect on some of the trans-continental carriers, by truck.

Exam. Linn: Objection sustained.

By Mr. Jacobson:

Q. Are you familiar with the fact that there is available truckaway service from your plant to St. George, Utah, at the present time?

A. No, I am not.

Q. If such a service were available, would you use it?

A. No.

Q. If contract and common carrier service were available from your Los Angeles plants to all of the points proposed to be served by PMT, would you utilize any of the services?

A. No.

Q. Why?

A. We already have established, since 1935, a trucking facility to us, and we are merely asking them to go out and extend themselves so as to be able to give us the service that we require, so I see no further need of going [fol. 347] to anybody else to get that service.

Q. Well, you are familiar, as a traffic man, with the fact that we have the Interstate Commerce Commission as a regulatory body?

A. Yes.

Exam. Linn: I wonder if we can avoid the argument.

Mr. Jacobson: It isn't argument.

Exam. Linn: Well, it is argument, in the form in which it started. Let's make it factual, if we can.

By Mr. Jacobson:

Q. What, if any, investigation have you made to determine from whom you will seek service, assuming the Interstate Commerce Commission should see fit to deny this application?

Mr. Frizzell: Would you read the question, Mr. Reporter?

(Last question read.)

Mr. Frizzell: I object to that on the ground that a while ago he asked if he had made any investigation and he said he had not.

Mr. Jacobson: This is another question.

Exam. Linn: I do believe we have exhausted the knowledge of the witness on that subject.

By Mr. Jacobson:

Q. Do you know at this time what you will do to secure service?

A. Oh, yes.

Q. If this application is denied?

[fol. 348] A. If this application is denied, we are going to provide a trucking service. I don't know whether it's going to be our own or some other contract carrier's now serving us.

Q. Is General Motors in the trucking business, transporting—

A. (Interrupting) No.

Q. Please wait until I ask the question.

A. Sorry.

Q. Does General Motors or any of its subsidiaries engage at the present time in either contract or common hauling of motor vehicles within the United States?

A. No.

Q. Have there been any policy discussions with the executives of General Motors looking to the establishment of a trucking service of your own to haul your own traffic.

A. No.

Q. So I infer from that that you would then seek an outside carrier, is that correct?

A. That would be our preference.

Q. And you have made no investigation in this particular area to find out if there is any available at the present time?

A. No.

Q. Do I understand that if a shipper today requests that General Motors at Raymer or at Oakland, a shipper in an adjacent state, requests that an existing carrier be permitted to move his traffic, you will honor his request? [fol. 349] A. What do you mean by "shipper"?

Q. Dealer, I mean.

The Witness: Will you repeat that again?

(The reporter read as follows:

"Question: Do I understand that if a shipper today requests that General Motors at Raymer or at Oakland, a shipper in an adjacent state, requests that an existing carrier be permitted to move his traffic, you will honor his request?"

A. No, we will not.

By Mr. Jacobson:

Q. The dealer receives a bill which shows a transportation charge, does he not?

Mr. Frizzell: I object—

A. (Interrupting) I am not—

Mr. Frizzell: (Interrupting) Just a minute, Mr. Lynch. That is irrelevant, what the bills show.

Mr. Jacobson: That is all.

Mr. Smith: May I ask the witness one question off the record before I proceed?

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Cross examination.

By Mr. Smith:

Q. Who is the director general or director of traffic of the entire General Motors Corporation?

A. We do not have any.

[fol. 350] Q. Do you have a director of traffic over all of

the motor vehicle manufacturing plants of the General Motors Corporation?

A. I just don't quite understand that question, Mr. Smith.

Q. Do you have a director of traffic over all of the truck and automobile manufacturing plants of General Motors Corporation?

A. No. Each division has its own traffic director.

Q. And all of the divisions collectively, the traffic directors, have no superior boss, that is, a traffic man?

A. No.

Q. Who are you answerable to?

A. The general manufacturing manager of Chevrolet Motor Division.

Q. And who is he?

A. Mr. E. H. Kelly.

Q. Your Exhibit No. 18, that merely shows the Chevrolet assembly plants, the location of them?

A. Yes, sir.

Q. The other divisions of General Motors have assembly plants located at additional points, do they not?

A. They do, but I am getting out of my division when I get over to those. I will be glad to tell you what I know about them.

Q. Well, as a good GM man for many years, you know about the other General Motors plants?

A. Yes.

[fol. 351] Q. For example, Mr. Lynch, the Oldsmobile Division and the Reo Division have plants located in Lansing, Michigan—the Oldsmobile Division has a plant located in Lansing, Michigan?

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

By Mr Smith:

Q. What elements govern your choice of whether to ship by rail or ship by truck when you have a shipment of cars going to a dealer or dealers?

A. Economics and service.

Q. What do you mean by "economics"?

A. The over-all costs.

Q. I thought you weren't interested in rates.

A. I never said I wasn't interested in rates.

Q. Assuming that to a certain point the rail rate was lower than the truck rate, you would ship by rail, wouldn't you?

A. Not necessarily.

Q. You do, don't you?

A. Yes.

Q. ~~You have for many~~ years?

A. Yes, sir.

Q. You said that one of the reasons you preferred to use a contract carrier was that when you had model changes you called the contract carriers into the plants and advised them as to the size of the model so that they could retool [fol. 352] their equipment, if necessary, to handle the new model?

A. Yes, sir.

Q. And you kept your contract carriers fully informed from time to time as to your shipping requirements?

A. That is right.

Q. Is that correct?

A. That is right.

Q. Do not manufacturers of other makes of automobiles do the very same thing with common carriers that they use?

A. I would imagine so.

Q. Would it be any more trouble for you to call a common carrier into your plant and advise them of a model change than it would be to call a contract carrier into your plant and advise them of a model change?

A. I would ask this question in connection with that, Mr. Smith: Are you talking about one common carrier or all the common carriers available to haul the stuff? Are you talking about one company or several hundred companies?

Q. Well, I will make my question specific. To do that, I will just refer to one.

A. Yes, sir, we could call one in, just as well as we could—



Q. (Interrupting) Suppose, to serve your entire territory, you had to call two, would that be much more trouble than calling one?

A. No.

[fol. 353] Q. You made one remark that I was very interested in, in answer to a question on direct examination, in referring to, and using the term "automobiles," when you said that that included passenger cars as well as trucks. Is it your position, as a shipper, that the term "automobiles" includes trucks as well as passenger cars?

A. I merely mentioned "passenger cars" and "trucks". Automobiles, in common parlance, refers to passenger automobiles.

Q. And trucks?

A. Just passenger cars, in common language.

Q. That wasn't the answer that I wanted, but thank you.

A. That is the correct one, that is the one you will get.

Q. I agree.

One of the motor carriers that I represent in this proceeding is a common carrier by the name of Western Auto Transports, Inc. Are you acquainted with that company?

A. My own acquaintance with that company is just through the acquisition of your new vice-president and head of the sales force, Mr. Herrick, in Detroit.

Q. And Mr. Herrick was formerly the traffic manager of the Packard Motor Car Company?

A. That is correct.

Q. Since Mr. Chuck Herrick resigned as traffic manager of the Packard Motor Car Company and became vice-president and sales manager for Western Auto Transports, [fol. 354] Inc., has he called upon you and solicited Chevrolet traffic out of your plants?

A. No.

Q. Do you know that Western Auto Transports, Inc., has a terminal located in Los Angeles, California?

A. No, I didn't.

Q. Did you know that they had authority from this Commission to transport passenger cars in initial movements by the truckaway method from Los Angeles, California, to all points in the state of Utah?

A. No, I didn't.

Q. What objection, if any, Mr. Lynch, would you have to using the services of Western Auto Transports to Utah from Los Angeles?

A. Well, we already have established a service to us from PMT that we are asking them to extend themselves to give us the same service. We see no need to go out and get any further—

Q. (Interrupting) So it's your position that existing carriers shouldn't be offered the opportunity to serve you, but that a carrier who doesn't have authority, that you want to have authority, that that carrier should be granted the authority?

A. Yes; that is our position.

Q. Are you acquainted with the other motor carrier whom I represent, a common carrier, Kenosha Auto Transport Corporation?

A. Yes, I know them.

Q. Do you know that they have a terminal in Los Angeles?

A. No, I don't.

[fol. 355] Q. Have they ever solicited your traffic?

A. No, they haven't.

Q. If they did solicit your traffic out of Los Angeles, they would solicit it from your Los Angeles traffic man rather than from your office in Detroit, wouldn't they, or wouldn't you know?

A. I would imagine they would solicit the Los Angeles, the local people.

Q. And they could have solicited your local traffic manager in Los Angeles and you wouldn't know about it?

A. Yes.

Q. I assume that you would have objection to using their service for the same reason that you wouldn't want to use Western Auto Transports' service?

A. That is correct.

Q. In the event one of your local dealers sent an order in and you got a routing instruction to ship via some motor common carrier, would you honor that routing?

A. No, we wouldn't.

Q. Hasn't your office issued instructions to motor common carriers to solicit traffic from your dealers?

A. No.

Q. No?

A. No.

Q. You said that the real reason that you wanted motor [fol. 356] truck service in lieu of the present rail service was that you wanted "service"?

A. Yes.

Q. And you said that rates didn't make any difference and you would gladly pay a higher rate in order to get the superior service, is that correct?

A. That is correct.

Q. Just how high would you go?

A. Oh, I don't know. The cheapest is not always the most economical, you know.

Q. That wasn't my question.

A. I don't know how high we would go.

Q. You also testified that—

Exam. Linn (Interrupting): I wonder if we could avoid summarizing the record.

Mr. Smith: This is the last summarization. I don't know how to put the question unless I can.

Exam. Linn: Just ask him a question.

Mr. Smith: All right.

By Mr. Smith:

Q. You want the motor carrier who is to serve you to have the proper facilities, and you used the term "proper facilities." Just what proper facilities would you expect a common carrier to have before you would use his service?

A. Comparable to what we have now.

Q. By that, do you mean substantially the same kind and type of equipment?

[fol. 357] A. Receiving facilities.

Q. And prompt delivery?

A. Prompt dispatch, quality service.

Q. One last question, and that's all.

Mr. Frizzell: Could we have that question and answer read back, sir?

(The reporter read as follows:

**"By Mr. Smith:**

**"Question:** You want the motor carrier who is to serve you to have the proper facilities, and you used the term 'proper facilities.'" Just what proper facilities would you expect a common carrier to have before you would use his service?

**"Answer:** Comparable to what we have now.

**"Question:** By that, do you mean substantially the same kind and type of equipment?

**"Answer:** Receiving facilities.

**"Question:** And prompt delivery?

**"Answer:** Prompt dispatch, quality service.")

Mr. Smith: I am satisfied with his answer. If you want, you can ask him on redirect.

Redirect examination.

**By Mr. Frizzell:**

**Q.** Is there anything further that you have in that connection?

Mr. Smith: Just a minute. Wait until I get through with my cross-examination.

[fol. 358] Mr. Frizzell: He was answering a question.

Exam. Linn: Finish your cross.

The Witness: I was finished.

Mr. Frizzell: Oh.

Mr. Smith: Quit interrupting me while I am interrupting you, please.

**By Mr. Smith:**

**Q.** You or someone in your company requested the applicant, PMT, to file this application, did you not?

**A.** Yes.

**Q.** Did you or anybody else in the Chevrolet Division of General Motors Corporation request any other motor carrier or motor carriers to file similar applications?

**A.** No.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam Linn: On the record.

We will adjourn until 9:00 o'clock in this same room tomorrow morning.

(Whereupon, at 5:05 p.m., Wednesday, February 20, 1957, the hearing in the above-entitled matter was adjourned, to resume tomorrow, Thursday, February 21, 1957.)

[fol. 359]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

DOCKET NO. MC-78787 (Sub 37)

**Transcript of Hearing—February 21, 1957**

Garden Room, Fairmont Hotel,  
Mason and California Streets,  
San Francisco, California.

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

F. ROY LINN, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

FRED V. SCHLAF, 1635 Southeast Water Avenue, Portland, Oregon, appearing for Portland Traction Company, protestant.

[fol. 360]

PROCEEDINGS

Exam. Linn: We will continue with the cross-examination of Mr. Lynch.

Mr. Smith: I had completed my cross-examination.

WILLIAM R. LYNCH resumed his testimony as follows:

Cross examination.

By Mr. Handler:

Q. Mr. Lynch, you provided the record with some figures as to the percentage of trucking and rail out of Oakland, 54 per cent was trucking and 46 per cent rail. Do you recall those figures?

A. Yes, sir.

Q. Is that with reference to Plant No. 1 alone?

A. That is the entire operation.

Q. What moves out of Plant No. 2?

A. Plant No. 2 is trucks.

Q. Do you have the figures for Plant No. 1 alone?

A. We haven't the figures here. I can't answer that. Mr. Cron will have them.

Q. With respect to Los Angeles, you said that all of the truckaway service is in California. Is the same true with respect to Oakland, intrastate?

Mr. Frizzell: Read the question back, Mr. Reporter.

(Last question read.)

By Mr. Handler:

Q. Do you think you have made a mistake?  
[fol. 361] A. Yes.

Q. Do you recall what the question was?

A. We truck to some Nevada points out of there.

Q. Is that of automobiles or trucks?

A. Both.

Q. Is it from Plant No. 1 or Plant No. 2?

A. Both.

Q. Who performs that service?

A. PMT.

Q. Exclusively?

A. Yes.

Q. When you were discussing the organization of carriers, contract carriers to serve your firm back in the 30's, you did not mean to imply, did you, Mr. Lynch, that Pacific



Motor Trucking Company was organized for General Motors operations?

A. In '35 they were.

Q. Isn't PMT a common carrier truck service of general commodities serving all the public?

A. PMT acquired or purchased what was then known as a carrier that was serving that location for dealers at that time and PMT—

Q. (Interrupting) You aren't answering my question, Mr. Lynch.

A. I am trying to answer it. I am trying to reconcile the transaction how PMT was born.

Q. Is it your recollection that it was born by the purchase of a truckaway operation?

A. Of an operation that was in existence at that time.

Q. You don't know that PMT has for many years been engaged in the transportation of general freight for the public?

A. PMT, as far as the engagement of Chevrolet, is confined to strictly automobiles, as far as I am concerned. If they are in the merchandise business, I suppose that is a common carrier operation. I don't know.

Q. Assume that it is a common carrier operation for general commodities for the public generally, not only in California but points in California and neighboring states. That doesn't make any difference to you, does it?

A. No.

Q. I am somewhat intrigued by this apparent favoritism you assert you have for contract carrier service. At the time of the filing of this application did you request PMT to file it as a contract carrier operation?

A. We did.

Q. Would it make any actual difference to your company if PMT had filed to serve the site of the General Motors plant at Oakland as a common carrier?

A. Would it make any difference to us?

Q. Yes.

A. Yes, it would.

Q. What difference would it make?

[fol. 363] A. In keeping with Chevrolet policy, we want

the same type of service on the Pacific Coast here as we have nationally. A company dedicated to our service and our service only, we want, and not one holding themselves to serve the public generally and holding themselves out to serve our competition, which will find us someday short of equipment, long on cars and with interrupted service. That is the kind of a service that Chevrolet wants.

Q. You have said that several times and I am familiar with your views in that regard. But if the application were limited to the site of the General Motors plant at Oakland, as a common carrier, you would still have the exclusiveness of the service at that point, would you not?

A. I don't know. My knowledge of the transportation business is such that I know of no common carrier that is exclusive to any one individual.

Q. All right. Do you have an agreement with PMT that they will not serve any other automobile manufacturer at any other point?

A. We have a contract with PMT to serve Chevrolet.

Q. At where?

A. Van Nuys and Oakland.

Q. You do not have any contract with them that they shall not serve any other automobile manufacturer, do you?

A. No, we do not.

Q. There is nothing to prevent them from making a contract [fol. 364] to serve Ford or Lincoln?

A. No.

Q. Nothing?

A. No.

Q. And that wouldn't make any difference to you?

A. No.

Q. Then, what difference would it make if PMT served the Oakland plant of General Motors as a common carrier, if it only could serve the General Motors plant at Oakland? What difference does it make?

A. As a common carrier or a contract carrier?

Q. A common carrier.

A. As a common carrier, he would be holding himself out to the public in general—

Q. (Interrupting) All right—

A. You want the answer, don't you?

Q. To the question, Mr. Lynch.

A. The question is, or the answer is, I do not want to have a common carrier service at Chevrolet plant locations for the purpose that they hold themselves out to the public generally, and we need a service dedicated solely to Chevrolet's business.

Q. I don't want to argue with you, Mr. Lynch, but if General Motors Plant—

Exam. Linn (interrupting): It's clearly argument, counsel, from this point on.

[fol. 365] Mr. Handler: All right.

By Mr. Handler:

Q. From the standpoint of service and the dedication of facilities, would there be any difference if PMT were a common carrier?

A. Yes.

Q. What difference would there be?

A. As a common carrier, they would be holding themselves out to Ford and Chrysler—

Q. At Oakland?

A. With their rates, at Oakland or any other locations, and their rates would be public rates and we would be paying the same as Ford and Chrysler, their costs would be co-mingled to such an extent that we would not have the benefit of any efficiency or economics that a contract carrier offers also.

Q. Then, is the real reason for your dislike of common carrier service that the rates would be published and open to public notice?

A. I don't dislike common carriers.

Q. Is that your reason for not wishing to have common carrier service, that the rates would be made public?

A. Our reason for contract carrier service is solely that dedication of that service to Chevrolet, to assure us of uninterrupted service with the volume production that we produce daily and deliver.

Q. You are familiar with the fact that such manufacturers as Ford and Chrysler use common carrier services with that same dedication?

A. No, I don't know that they have any dedication. I understand that they use common carriers.

Q. And it's that competition that you have found so keen that is now inducing you to support this application, isn't it?

A. Will you repeat that again?

Q. It's the competition of these common carrier truck lines serving your competitors that has induced you to support this application, isn't that a fact?

A. No. This application was originated by the PMT at my request to give us a service throughout the entire Pacific Coast area, and in so doing, it's a policy of General Motors that any faithful servant or supplier of ours over a period of 20-some years, we do not just take and say to them, "Well, it's been nice knowing you. We are going to take somebody else in and do this business with them." We don't do business that way in General Motors. This is an established company that has been serving our company location for 22 years. We asked them to extend their services to give us trucking within the entire Pacific Coast area.

Q. In order that you could meet—

Mr. J. Schell (interrupting): Could I hear that answer again, please?

(Last answer read.)

[fol. 367] Mr. Handler: I don't think you understood the question I was asking you, if you did not ask PMT to do this so that you could meet the competition that you were encountering in the services that were being performed by common carriers for your competitors.

The Witness: I asked PMT to make this application to the Interstate Commerce Commission to give us trucking service within the Pacific Coast area.

By Mr. Handler:

Q. And you said that business was competitive and that is why you required it, isn't that right?

A. I just gave you the answer to the question.

Q. You said on direct that there was competitive—

A. (Interrupting) Sure, we are in a competitive market, with competition.

Q. You said you had had objections or complaints from a dealer at St. George, Utah, an off-rail point?

A. Yes.

Q. How are you now delivering to St. George, Utah?

A. Rail.

Q. How do you get it from your assembly plants there if rail doesn't reach it?

A. He gets it there at a railhead some 60 miles away.

Q. Does the dealer then go to the railhead and get it?

A. That is right.

Q. You have already testified if there was available truck [fol. 368] service to St. George, Utah, you wouldn't use it now?

A. No.

Q. How about Boise? You said there was a complaint at Boise.

A. Yes.

Q. That is a rail point?

A. That is right.

Q. Are you shipping by rail to Boise now?

A. Yes.

Q. Mr. Lynch, I represent Convoy Company. Do you know that that company has actively solicited your company for business out of Oakland?

A. No, I do not.

Q. You have no familiarity with that?

A. No, I do not.

Q. Your traffic managers located at the plants do not report solicitation efforts to you?

A. No, they do not.

Q. You haven't instructed them to do so?

A. No, I haven't.

Q. They don't keep you aware, then, of what facilities other than PMT and rail are available in the field?

A. They do not.

Q. They do not. Well, now, if Convoy Company were willing and able to establish and maintain for you all of the facilities which you require, and affording the service on

[fol. 369] the basis of a cost of transporting General Motors products alone, would you have any hesitancy in using that service to Idaho, Washington and Oregon, for example?

A. We wouldn't use it.

Q. Why not?

A. Because we already have a well established company.

Q. Assuming, then, that this well established company, which I assume is PMT—

A. That is correct.

Q. (Continuing) —were denied this application. You have indicated that your company would do something else in that event?

A. That is correct.

Q. I take it, if this application were denied, then you would look at my client's service?

A. No, we would not.

Q. Why not?

A. We would establish our own company out here on the Pacific Coast.

Q. That isn't what you said on direct examination, Mr. Lynch, or on cross. You originally said that—

A. (Interrupting) Well, I—

Q. Just a minute.

Exam. Linn: Let's not argue with the witness.

Mr. Handler: I am just trying to clarify what is an [fol. 370] obvious contradiction.

A. We would establish a carrier out here in keeping with Chevrolet policy. We would not use your service as a common carrier. Does that answer your question?

By Mr. Handler:

Q. In part, it does. You would establish a carrier without any connection with any other shipper, is that right?

A. Correct.

Q. You understand that PMT now renders service for other shippers, do you not, in transporting general commodities—

Mr. Frizzell: Will you repeat the question?

Mr. Handler: It isn't finished, I hadn't finished it.



Mr. Frizzell: I know you didn't, but it was getting to be too general, I thought.

(Last question read.)

Mr. Frizzell: I think he answered that question, Mr. Examiner, sometime ago.

Exam. Linn: Yes, I believe he had.

By Mr. Handler:

Q. I was relating it now to general commodities for automobile manufacturers.

Mr. Frizzell: If you know, Mr. Lynch.

Exam. Linn: The record is replete on that.

Mr. Handler: All right.

By Mr. Handler:

Q. Do you have the figures of the distribution, Mr. Lynch, out of Plants Nos. 1 and 2 to the states involved in this [fol. 371] application?

A. No, I have not.

Q. Who does have that?

A. Mr. Cron, our traffic manager at Oakland, at the Oakland plant.

Q. He will be a later witness?

A. That is right.

Mr. Handler: That is all I have.

Mr. Bieneman: I want to clear up two things that were discussed yesterday on the record. I have consulted with Mr. Johnson and he has indicated sometime during the course of the proceeding a witness would read into the record from the rail guide the plants that are served directly by the Southern Pacific, where that is not the case what local railroad or other railroad may serve those plants. He has also agreed with me, in order to avoid lengthy cross-examination, that he would have no objection to my introduction into this record as an exhibit the reply to which I referred yesterday, filed September 23, 1955, and with the Examiner's permission I will make copies of

this reply and file them with you as a late-filed exhibit, if that is agreeable.

Mr. Johnson: Mr. Examiner, I will offer no objection to the submission of that document in the record. As a matter of accommodation, not particularly for the reason you gave, Mr. Bieneman, because it's immaterial to me.  
[fol. 372] Mr. Bieneman: That is all right.

Mr. Johnson: But I think the offer would be more appropriately made by you at the conclusion of our case, because this will be part of your evidence.

Mr. Bieneman: I think that is right, sir, but I do want to ask Mr. Lynch some questions that are connected with this matter, not from this particular document, but I wanted it clear on the record at this stage, because I do propose to offer this as an exhibit.

Cross examination.

By Mr. Bieneman:

Q. In connection with this document to which I have just referred, that was filed in September 1955 on behalf of the Southern Pacific Railroad, the statement is made in three or four places to the same effect, and the final statement is this—

Mr. Frizzell (interrupting): Mr. Examiner, I don't know whether this is proper cross-examination. Counsel is going to read from a document that is not of record. There is nothing to indicate that this witness has any familiarity with the document at all.

Mr. Bieneman: Well, I won't read from the document. I think that objection is probably well taken.

By Mr. Bieneman:

Q. Assuming for the purposes of my question, Mr. Lynch, that there are some statements to the general effect that the reductions made by the Southern Pacific Railroad from [fol. 373] the Los Angeles area to Arizona were necessary in order to avoid loss of business to truck competition, I would like to know whether any such statement was made

by you or anyone in your organization to the Southern Pacific at approximately that time, in the fall of 1955.

A. No.

Q. In other words, nothing was said by anybody in your organization to indicate to the Southern Pacific that any rate reductions were necessary in order to avoid the loss of traffic?

A. No.

Q. That is right?

A. That is correct.

Q. Then, if such statements were made they were without any justification on your part, as a shipper?

A. Right.

Q. Mr. Lynch, you recall, do you, the circumstances of those rate reductions and the fact that the Commission suspended them?

A. No; I am not familiar with that.

Q. You don't recall that at all, sir?

A. No.

Q. Do you recall the fact that after the suspension a hearing was scheduled by the Commission with respect to those rates in the early part of 1956, in January or February?

Mr. Frizzell: I object to the question and submit that it's immaterial and irrelevant to the issues in this proceeding.

[fol. 374] Exam. Linn: I believe you have exhausted the information of this witness on that subject, Mr. Bieneman.

By Mr. Bieneman:

Q. Well, I will ask you one other question, Mr. Lynch. Was your company responsible for the application which was filed in March 1956 by the PMT for truck rights from the Los Angeles area to Arizona?

A. We were.

Q. And do you know whether or not that application was filed within a few weeks after the Southern Pacific withdrew these reduced rates?

A. I am not familiar with that at all.

Q. You have never heard of it before?

A. Never heard of it before.

Q. It wasn't even discussed with you at the time?

A. Not with me personally.

Q. Was it discussed with someone in your organization?

A. Not to my knowledge.

Q. Then, so far as you are concerned, Mr. Lynch, and not only you personally but your company, as a matter of policy, never at any time did you contemplate taking any traffic away from the railroad because of the rates being too high as compared with truck rates, is that right?

A. No. If Southern Pacific would carry them down here under their arms, we are still going to truck them.

Q. I think you misunderstood my question, sir.

[fol. 375] Mr. Burchell: Read that answer.

(Last answer read.)

By Mr. Bieneman:

Q. You misunderstood my question. The question was not about truck service, but at any time have you indicated, within the past several years, indicated to the Southern Pacific, as a railroad, that you were going to take rail traffic away from them because their rates were too high in relation to truck rates?

A. No.

Q. Did you ever indicate, or anyone in your organization indicate, to the Southern Pacific Railroad, as a railroad, that you were going to take traffic away from them as a railroad for any reason whatsoever?

Mr. Frizzell: Hasn't that question been asked, Mr. Examiner?

Exam. Linn: I feel it has been given a world of space in this record.

Mr. Frizzell: I think he is badgering the witness now. He is badgering the witness now.

The Witness: I don't understand your question. Repeat it.

By Mr. Bieneman:

Q. Let me put it a different way; then I will drop the subject. Did you ever indicate to the Southern Pacific Railroad, or did anyone in your organization indicate to them, that there was any danger of your diverting traffic from the railroad to some company other than the Pacific Motor Truck?

[fol. 376] The Witness: Will you read that, Mr. Reporter?

(Last question read.)

Mr. Frizzell: I will object to the question. It is improperly phrased.

Exam. Linn: I understood the witness to say several times in this record that advice was given to Southern Pacific that some effort should be made to extend the authority of PMT and, if that was not possible, then the shipper would have to take some other steps to obtain truck service. I think that is clearly shown of record.

Mr. Bieneman: My question is different than that, Mr. Linn, and I don't wish to argue with you or the witness, but I would like to have the record clearly show whether or not there was ever any indication given by the shipper that there was any danger of any loss of traffic, at that time, to anyone other than the Pacific Motor Truck, as the rail subsidiary.

Exam. Linn: Are you able to answer, Mr. Lynch?

A. What time are you talking about?

/ By Mr. Bieneman:

Q. Anytime up until now.

A. I told the Southern Pacific management, Mr. W. G. Peoples, vice-president in charge of traffic, in July of 1956 that we were not concerned with Southern Pacific's policy any longer about hauling cars to points—

Q. I don't want to interrupt you, please, sir, but I think you are about to say the same thing you said yesterday [fol. 377] and it isn't necessary.

A. O-K.

Q. All I want is one answer. Did you ever indicate to Mr.

Peoples or anybody else at the Southern Pacific that you were going to take traffic away from them and give it to some other company, other than the Pacific Motor Truck?

Mr. Frizzell: Mr. Examiner, I think the question has been asked, and it's been answered, several times on the record, and I object to it—

Mr. Bieneman: If it has, why can't he answer it right now? I thought he said a minute ago that he didn't understand the question.

Exam. Linn: Are you able to answer?

A. I will tell you that we told the Southern Pacific management that if they did not have PMT provide a trucking service to service the Chevrolet plants on the Pacific Coast we would provide our own service.

By Mr. Bieneman:

Q. In other words, then, there was, it was clear—

A. And that was not a threat and there was no danger involved in it. It was plain business.

Q. In other words, you made it clear to them that there was no danger of any loss of traffic unless and until the Commission might deny this application?

Mr. Frizzell: I hate to interrupt counsel, but I think he [fol. 378] should be admonished not to try to interpret the answers of the witness.

Mr. Bieneman: I am not trying to interpret.

A. You have got it, as far as I am concerned.

Mr. Bieneman: I am trying to get one thing, and I haven't gotten it yet, Mr. Examiner.

By Mr. Bieneman:

Q. Did you at that time that you have discussed make it clear that the danger of any diversion of traffic from the Southern Pacific, either through its railroad or through its truck subsidiary, the danger of any such diversion occurring only if and when the Pacific Motor Truck should fail to secure truck rights in its own name? Is that right?



A. I have already answered that.

Q. Would you mind answering it now, please?

Mr. Frizzell: I object, Mr. Examiner.

Exam. Linn: Sustained. I believe it's fully shown of record.

Mr. Bieneman: I don't think it is. If you feel it is, could you tell me what the answer is on the record?

Exam. Linn: I feel that PMT will get first chance if it is able to get any operating rights, then the problem will be settled so far as General Motors is concerned; if PMT is unsuccessful, I think the record shows that General Motors will then explore whatever remaining possibilities then may exist.

Mr. Bieneman: But that is not my question. That is clear. My question was if he made it clear to the railroad [fol. 379] at that time that there was no danger of any diversion until and unless this application had been tried and denied.

Exam. Linn: The witness has made it quite clear that General Motors does not propose to employ Robertson, Convoy or any other motor carrier now serving points of assembly in California.

Mr. Bieneman: I think he has made that clear, sir, but again, what I am interested in is what he told the railroad at that time, not what he has said here today. I want to know whether that was in effect the statement made to the railroad at that time.

Exam. Linn: Are you able to enlighten us on that, Mr. Lynch?

The Witness: Mr. Examiner, I can only tell this gentleman what I have already told the Southern Pacific and what I have testified here. If he wants me to manufacture some theory for his benefit or for his convenience, I just can't do it. There is the facts, in the record.

Exam. Linn: You have given us the full substance of your conversations with the Southern Pacific?

The Witness: I have.

By Mr. Bieneman:

Q. Mr. Examiner and Mr. Lynch, I assure you I don't want you to manufacture anything. I would simply like

to get one simple fact clear in the record. You can give me any answer that is correct. That is whether you have made it clear to the railroad at the time you discussed this matter with them that there was no danger of any diversion [fol. 380] to any other form of service unless they were unable to secure truck rights.

Mr. Frizzell: I object to the question.

Exam. Linn: Sustained.

Mr. Bieneman: I respectfully suggest, Mr. Examiner, we don't have an answer to that question on the record, and we are entitled to an answer, and for that reason I except to your ruling.

By Mr. Bieneman:

Q. Mr. Lynch, the statement was made yesterday by a witness for the Pacific Motor Trucking Company, Mr. Booth, that the basic reason for the filing of the earlier application for truck rights into Arizona was a car shortage. Was that your understanding of the basic reason?

A. That was one of the contributing factors, yes.

Q. Was that the fundamental factor, as you see it?

A. No. The fundamental factor was that we wanted truck service to those points in Arizona.

Q. And that is the basis on which you supported the application and on which the Joint Board recommended the grant of authority, wasn't it?

A. That is right.

Q. Not because of a car shortage, was it?

A. No.

Mr. Bieneman: That is all.

Cross examination.

By Mr. Beardsley:

Q. Mr. Lynch, in setting the transportation policies for the Chevrolet Division, I would assume that you take into [fol. 381] consideration first of all, among other things, at least, the Act itself, the national transportation policy?

A. Oh, yes.

Q. And I would assume also that you are quite familiar with the decisions of the Commission and the courts, in connection with operations—

Mr. Frizzell (interrupting): Mr. Examiner, that is not proper cross-examination, to inquire of this witness what he knows about the law.

Mr. Beardsley: Mr. Examiner, I think I have a right to go into that. He has testified that he sets transportation policies for the organization and I would like to know what he takes into consideration in setting those policies.

Mr. Frizzell: I think every businessman ordinarily consults with counsel on these legal questions.

Exam. Linn: I suggest you proceed directly to the question you have in mind, without laying any substantial predicate.

Mr. Beardsley: I didn't hear your remark, Mr. Examiner.

Exam. Linn: Proceed directly to the question you have in mind.

Mr. Beardsley: That is the question I have in mind, I was coming to it.

Exam. Linn: Objection sustained, if that is what you had in mind. This is not a test of the witness's information as to the law.

By Mr. Beardsley:

Q. Are you aware of the fact that generally speaking the [fol. 382] Commission has restricted railroad operation of motor vehicles to service which is tied in with the operations of the railroad itself?

Mr. Frizzell: I object to the question. Improper cross-examination.

Exam. Linn: Sustained.

Mr. Beardsley: And I can't go into that question in determining what Mr. Lynch does in connection with setting transportation policies of the Chevrolet Division, Mr. Examiner?

Exam. Linn: The objection to the pending question is sustained. I don't know what other questions you have in mind.

Mr. Beardsley: I would like to know from this witness what attention the Chevrolet Division of General Motors pays to the Act, to the national transportation policy and to the decisions of the Commission and the courts.

Exam. Linn: That is a question?

Mr. Beardsley: You said you wanted to know what I have in mind. I am trying to tell you.

Exam. Linn: As far as the record stands now, there has been an objection and the objection has been sustained. Do you have any further questions of the witness?

Mr. Beardsley: No, I do not, Mr. Examiner.

Cross examination.

By Mr. Singer:

Q. With the exception of PMT, isn't it correct that all of the contract carriers serving your company are so-called [fol. 383] independent motor carriers, not affiliated with a railroad?

A. That is correct.

Q. At your Flint plant, isn't it correct that your company uses the services of more than one motor carrier?

A. We use two.

Q. What are the names of those?

A. Anchor Motor Freight and Complete Auto Transit.

Q. And at Norwood, Ohio, you use the services of more than one?

A. Anchor Motor Freight and Complete Auto Transit.

Q. Are there any other assembly plants at which you use the services of more than one motor carrier?

A. No.

Q. Are you familiar with the fact that some of the contract carriers serving your company are affiliated through common control with carriers who serve other auto manufacturers?

Mr. Frizzell: If you know, Mr. Lynch.

A. I don't know.

By Mr. Singer:

Q. Do you know whether or not Complete Auto Transit, for example, is affiliated with another carrier through common control, serving other manufacturers?

A. No, I don't know about Mr. Rice's personal holdings, what Mr. Rice's personal holdings are.

Q. Were you present during the cross-examination of Mr. Booth yesterday?

[fol. 384] A. Yes, sir.

Q. Did you hear his testimony to the effect that PMT, in their intrastate operations for your company, were compensated generally on the basis of a cost-plus principle?

A. Yes, I heard him say that.

Q. Is that policy of your company to compensate your contract carriers on the basis of the cost to the contract carrier of rendering the service plus a reasonable profit?

A. That is our policy. We see to it that it's carried out.

Q. And that would be followed in the event that PMT was granted the authority here?

A. Absolutely.

Q. Does the compensation to your contract carriers on that basis depend on, to some extent, the volume of traffic being given to them at any particular time or over any extended period?

A. No—well, the volume has something to do with it, but it's a matter of business relationship between the two companies that we see that they make a reasonable profit.

Mr. Singer: Thank you very much.

Exam. Linn: Is there any other cross-examination?

(No response.)

Exam. Linn: Redirect?

Mr. Frizzell: Yes.

Redirect examination.

By Mr. Frizzell:

Q. I just have one question to ask you, Mr. Lynch. Mr. [fol. 385] Singer asked you whether or not you have more

than one contract carrier at locations other than at Flint and Norwood and you testified that those are the only two locations at which you have more than one contract carrier and, in fact, you have two contract carriers at those locations. How long have those two contract carriers been serving those locations?

A. Since 1934.

Mr. Frizzell: That is all.

Exam. Linn: Are there any objections to Exhibits 15 to 18, inclusive?

#### OFFERS IN EVIDENCE

Mr. Frizzell: I offer them at this time.

Exam. Linn: Is there any objection?

(No response.)

Exam. Linn: Without objection, Exhibits 15 to 18 will be received.

(Intervenor's Exhibits Nos. 15 to 18, inclusive, Witness Lynch, were received in evidence.)

Mr. Frizzell: Mr. Barrett.

DUDLEY B. BARRETT was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name for the reporter, Mr. Barrett?

A. Dudley B. Barrett.

Q. Your address?

[fol. 386] A. 3044 West Grand Boulevard, Detroit, Michigan.

Q. What is your occupation?

A. I am the traffic manager of the Buick-Oldsmobile-Pontiac Assembly Division of General Motors Corporation.

Q. How long have you been in that position?

A. About seven years.



Q. Prior to that who were you with?

A. I started with General Motors at the Oakland Motor Coach Company in 1929 and I held various traffic positions there until 1932 when I went to Buick Division at Flint, Michigan, and I held various positions there until 1941 when I went to Chicago as traffic manager of the Buick Aviation Engine plant. In 1946 I went to Kansas City as traffic manager of the BOP assembly plant in Kansas City. I returned to Detroit as assistant traffic director in that same year, later in '46, and in '49 was appointed traffic director of the division.

Q. Give us the official name of your division.

A. The official name of the division is Buick-Oldsmobile-Pontiac Assembly Division of General Motors Corporation, commonly known as "BOP".

Q. Your division is simply an operating unit of the corporation?

A. It is an operating division of the corporation. We assemble Buicks, Oldsmobiles and Pontiacs in several assembly plants throughout the country.

Q. Mr. Barrett, will you look at Exhibit 19 and tell us [fol. 387] what that exhibit is?

A. The exhibit is one photograph?

Q. Yes.

A. The first photograph is that of an Oldsmobile station wagon.

Q. Commonly known as the Fiesta?

A. Your eyes are better than mine.

(Intervenor's Exhibit No. 19, Witness Barrett, was marked for identification.)

Q. And Exhibit No. 20?

A. That is an Oldsmobile convertible.

Q. Exhibit No. 21?

A. Is a four-door sedan, commonly called a hardtop sedan. And the next one is a Pontiac.

Q. No. 22?

A. That is a two-door Pontiac hardtop.

(Intervenor's Exhibits Nos. 20, 21, 22 and 23, respectively, Witness Barrett, were marked for identification.)

By Mr. Frizzell:

Q. Mr. Barrett, are those photographs of automobiles representative of the line of automobiles which your division assembles?

A. They are.

Q. And how many color combinations do you have in those automobiles, if you know?

A. A great many. I don't know the number, but it's probably several hundred.

[fol. 388] Q. And does the customer have the option of buying various mechanical arrangements on the cars?

A. Yes, he has an option of any color or trim or mechanical combination of things that he would like to have.

Q. Would those combinations run into the hundreds, sir?

A. Yes, I would say they would.

Q. Mr. Barrett, I direct your attention to Exhibit No. 23 and ask you to tell us what that exhibit represents.

A. This represents the normal shipping areas for each of the BOP assembly plants. The name of the plant is shown within the area for each of the assembly plants. In addition, the locations of the parent or the, what we call them, home plants are shown for Buick, Oldsmobile and Pontiac at Flint, Lansing and Pontiac, respectively.

Q. Did you say that those are normal shipping areas, shown on this map?

A. Yes.

Q. And the location of the plant is the city named on the map?

A. That is correct, within the particular areas shown, except, of course, for the home plant towns.

Q. Mr. Barrett, do you have available to your division at each of those assembly plants a contract carrier motor service for the delivery of your automobiles throughout the shipping areas shown on the map?

A. With one exception, we do have the service available [fol. 389] at all of our plants for the entire area—pardon me, two exceptions. One is the state of Idaho, from our Kansas City, Kansas, plant. The other exception, of course, is from South Gate.

Q. Mr. Barrett, tell us what your duties are as traffic director of your division.

A. Generally to establish the transportation policies of the division and see that adequate transportation service is provided, both inbound and outbound, to our plants.

Q. Is your position, say, comparable to the position of Mr. Lynch, in that you control the traffic, make policies?

A. That is correct.

Q. Does your division pay the freight on the outbound delivery of new automobiles?

A. We pay all of the outbound freight on new automobiles, yes.

Q. You heard the testimony of Mr. Lynch, did you, Mr. Barrett?

A. Yes, sir.

Q. Did you hear it with respect to the requirements of his division in shipping inbound materials to the plants and so forth?

A. Requirements of those divisions?

Q. Yes, the requirements of his division to ship carload freight inbound, parts and materials?

A. Yes,

Q. Would your testimony be the same on that point?

A. It would. Practically all of our business moves in by rail carload.

[fol. 390] Q. Do you have traffic managers at each of your plants?

A. Yes, we have a traffic manager at each plant location.

Q. Does that man report to you?

A. That man reports to me, so far as policies and that type of thing are concerned, directly reports to the plant manager, as a matter of everyday practice.

Q. But insofar as transportation policy is concerned—?

A. He reports to me, yes.

Q. Who is your traffic manager at the—what is the name of your plant here in California?

A. It is the South Gate plant.

Q. Where is that located?

A. It's located in South Gate, California.

Q. Who is your traffic manager at that point?

A. Joseph F. Singerle.

Q. Is Mr. Singerle here today?

A. He is.

Q. Will he testify in this proceeding?

A. Yes.

Q. Just for the benefit of counsel, does Mr. Singerle have with him figures with respect to production and traffic distributions and—

A. He will be able to go into detail on that, yes.

Q. In the course of carrying out your duties, Mr. Barrett, do you have occasion to get reports with respect to [fol. 391] complaints about delivery services from your plants?

A. We do get such reports, yes.

Q. Have you had any complaints in the past with respect to the transportation services afforded your division at the South Gate plant?

Mr. Jacobson: Just a moment. May I ask the counsel a question?

Mr. Frizzell: Go ahead.

Mr. Jacobson: Are you going to have the principal here, or can we cross-examine this man in detail concerning these reports? If we are going to have the principal that gives him the reports—

Mr. Frizzell: We are not, Mr. Jacobson. Mr. Barrett will be examined—

Mr. Jacobson: What I have in mind is, Mr. Frizzell, your asking—

Exam. Linn: I wonder if you have an objection? Maybe we can settle it faster that way.

Mr. Jacobson: I was trying to direct the cross-examination. From what he is doing now, this man is wide open, so I will withdraw my request.

Mr. Frizzell: I will rephrase the question.

By Mr. Frizzell:

Q. Does management look to you, for example, to see that adequate transportation services are available at all your plants?

A. They do.

[fol. 392] Q. Have you encountered any problems in connection with the South Gate plant?

A. We have had numerous requests made to us through the parent division of the BOP assembly setup for truck shipment in the West Coast area, which is not available to us here as it is in the other plant areas.

Q. Mr. Barrett, referring now to your Exhibit No. 23, the map, would you tell us when the South Gate plant was established?

A. It was established in 1936.

Q. When was the Linden plant established?

A. In 1937.

Q. When was the Kansas City plant established?

Mr. Jacobson: I will object to this as incompetent, irrelevant and immaterial.

Exam. Linn: The witness may answer.

A. The Kansas City plant was established in 1946.

By Mr. Frizzell:

Q. The Arlington plant?

A. 1954.

Q. The Doraville, Georgia, plant?

A. 1947.

Q. The Wilmington plant?

A. '47.

Q. The Framingham plant?

A. '48.

Q. Mr. Barrett, when you opened the Kansas City plant [fol. 393] in 1946 did you ship by rail and by motor carrier truck out of that plant?

A. Yes, we shipped during the early part of that plant's activity about 60 per cent rail and 40 per cent truck.

Q. What is the percentage distribution today at that plant?

A. In 1956 it was 14 per cent rail and, I think, it is averaging about 10 per cent now.

Q. The Doraville plant, what is the percentage distribution of rail versus truck, what was it when you opened that plant?

Mr. Jacobson: I want to object to it on the grounds it's incompetent, immaterial and irrelevant to this proceeding.

Mr. Frizzell: It is not.

Mr. Jacobson: What will these facts, if they are established as facts, prove in this proceeding, in the matter of this application?

Mr. Frizzell: It will prove the trend that has been going on over the years. Mr. Lynch gave testimony about it. These facts will further establish it.

Exam. Linn: You may answer the question.

Objection overruled.

By Mr. Frizzell:

Q. The Doraville plant, when you opened it, what was the percentage of distribution, rail versus truck?

A. The distribution was approximately equal, 50 per cent rail and 50 per cent truck.

Q. What is it today?

[fol. 394] A. Today it's a hundred per cent truck.

Q. I won't go into all of them, but is that generally the case at all the plants?

A. Yes, we have all of our plants trucking away all of their production, with the exception of Kansas City and South Gate, and Kansas City is now about 10 per cent rail and 90 per cent truck.

Q. Your newest plant is the Arlington plant, opened in 1952?

A. That is correct.

Q. What was the distribution, rail versus truck, when you opened that plant?

A. We have never made a rail shipment from the Arlington, Texas, plant.

Q. What is your distribution at the South Gate plant?

A. It's approximately equal, 50 per cent rail and 50 per cent truck.

Q. I don't know whether I asked you or not, but are these other plants served by contract carriers?

A. Each plant is served by a single contract carrier.

Q. And the location of their facilities is where?

A. Their facilities is located on property owned by us and leased to the carriers, with the exception of the prop-



erty at South Gate, and that is leased by us and subleased to PMT.

Q. But that still is adjacent to the plant property?

A. Yes.

[fol. 395] Q. What is the reason that you have for using contract carriers in your operations?

A. We think that they provide a more efficient and satisfactory service. We can depend on them for a good job. They have been with us for a long time. And the trend, I think, is definitely towards truck, and since our experience has been with the contract carriers, we feel that they are the people we want to do it.

Q. Do you keep your contract carriers informed as to model changes?

A. We do.

Q. And do you keep your contract carriers informed as to production schedules?

A. Yes, we inform them generally about three months ahead of time and, specifically, through the local plants as changes occur or for the next meeting following period.

Q. What is your reason, Mr. Barrett, for asking Pacific Motor Trucking—let me ask you this first: Does the applicant here today serve your South Gate plant?

A. It does, and has satisfactorily for a long time.

Q. Has it served your plant since it opened?

A. Yes.

Q. What is your reason or reasons for asking, or did you, Pacific Motor Trucking Company to extend its operation in serving your South Gate plant?

[fol. 396] A. We did.

Q. And what territory did you ask them to serve?

A. We asked them to serve the states of Washington, Oregon, Montana, Idaho, Utah, Nevada and Arizona.

Q. Did you ask them to give truckaway and driveaway service?

A. We did.

Q. Or operating authority, I mean, that you asked them to acquire. What is the policy of your company with respect to truckaway and driveaway?

A. The policy of our division is to either truck or deliver by rail all automobiles, with no driveaway movement.

**Q.** As a matter of fact, what kind of authorities do your other contract carriers have around the country?

**A.** They have truckaway and driveaway authority.

**Q.** Why do you ask them to give driveaway, Mr. Barrett?

**Mr. Burchell:** I object to that as leading, calling for a conclusion.

**Mr. Jacobson:** He said there is no driveaway out of this plant.

**Exam. Linn:** I understood his answer before went to policy. If there is any need for driveaway, he may indicate what it is.

**By Mr. Frizzell:**

**Q.** Why do you ask for that?

**A.** To take care of emergencies which may arise through the break-down of the truckaway facilities, or plant troubles at some other plant, bordering plant.

[fol. 397] **Q.** Mr. Barrett, your testimony up to this time, as has been indicated in the case of Mr. Linn, is that there has been a trend toward increasing the use of motor carriers in trucking automobiles to the customers. Now, what is the reason for this?

**A.** I think that the main reason is that dealers have been preferring truck delivery; it seems to be more convenient for them. We think that the automobiles arrive in better condition by truckaway than by rail. The transit time is generally less. Very often we have to get what we call a sold car or one that is in immediate demand to a dealer as promptly as possible to cover a sale that he has made.

**Q.** Mr. Barrett, to what extent will you use the Pacific Motor Trucking Company's service if this application is granted?

**A.** Well, we will use it immediately to the fullest extent. It's hard to anticipate at the moment, but starting from our present 50 per cent truckaway out of South Gate, I would estimate that it would go immediately to between 60 and 75 per cent truckaway.

**Mr. Frizzell:** That is all.

## OFFERS IN EVIDENCE

Mr. Examiner, I will offer Exhibits 19 through 23, inclusive.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 19 through 23, Witness Barrett, were received in evidence.)

Mr. Smith: May we have a brief recess, Mr. Examiner, before we start cross-examination?

Exam. Linn: Very well, we will take about 10 minutes.

[fol. 398] (Short recess.)

Exam. Linn: The hearing will be in order.

Is there a further appearance?

Mr. Schlaf: Yes, Mr. Examiner. Fred V. Schlaf, traffic manager, Portland Traction Company, 1635 Southeast Water Avenue, Portland 14, Oregon, protestant.

Exam. Linn: Are the parties prepared for cross-examination of the witness?

Mr. Cronon: Yes, sir.

## Cross examination.

By Mr. Cronon:

Q. Were you in the hearing room yesterday, Mr. Barrett?

A. Yes.

Q. Did you hear my cross-examination of Mr. Lynch?

A. Yes.

Q. If I were to ask you the same questions with respect to Buick-Olds-Pontiac Assembly Division of General Motors, in your position as traffic director, would your answers be substantially the same?

Mr. Frizzell: I don't think that is proper cross-examination.

A. I will answer the question by saying no; I don't recall the questions well enough to give a general answer.

By Mr. Cronon:

Q. Have you on behalf of BOP entered into any arrangement with Pacific Motor Trucking Company in the nature of a contract for their hauling the cars which are assembled [fol. 399] at your South Gate plant?

A. We presently have a contract with PMT, yes.

Q. Do you propose to enter into any additional contract with respect to the application being heard today?

A. Yes, the normal operation would be to amend the contract.

Q. Well, your new contract or your amendment thereof would be on the same basis as the old one?

A. Generally speaking, as to the terms and conditions, they would be about the same, I would say, yes.

Q. Having in mind your answer there, what tonnage have you contracted with PMT to turn over to them, or will you contract to turn over to them, if the new application is granted?

A. Isn't that between the contracting parties?

Q. Well, I thought that you would be one of the contracting parties.

A. Well, but the contract is confidential, is it not?

Exam. Linn: If you are able to respond, Mr. Barrett, will you please do so?

The Witness: Would you please repeat the question, or read it?

(The reporter read as follows:

"Question: Having in mind your answer there, what tonnage have you contracted with PMT to turn over to them, or will you contract to turn over to them, if the new application is granted?")

A. I don't know what tonnage will be in the contract.

By Mr. Cronon:

Q. Who in BOP would know that, Mr. Barrett?  
[fol. 400] A. I don't think anyone in BOP would know that.

Q. You stated that you proposed to start from a present 50 per cent via truck immediately?

A. Yes; our present division at South Gate is 50 per cent truck and 50 per cent rail.

Q. And if I understood your answer correctly on direct, that would be how you would start out under this proposed operation if the application is granted?

A. I believe I said we would go immediately to between 60 and 75 per cent truck, rather than the present 50.

Q. And it follows, does it not, that that percentage figure would be reflected in any contract which is executed between the applicant and BOP?

A. No, I wouldn't say that necessarily at all.

Q. You don't think that you will cover this operation by a contract, is that correct?

Mr. Frizzell: That isn't proper cross. He said he would enter into a contract. That is, Mr. Examiner, improper cross-examination.

Mr. Cronon: Mr. Examiner, I asked him if going from a 60 to 75 per cent immediately would be within the terms of the contract. I think that is a proper question.

Mr. Frizzell: I doubt, Mr. Examiner, whether it is proper cross-examination to inquire into the provisions of a contract in this type of proceeding.

[fol. 401] Exam. Linn: I believe you have basically the information as to volume and it doesn't necessarily follow that the contract would cover the exact volume.

Mr. Cronon: But what I have in mind, Mr. Examiner, is that on a contract carrier application there has to be something definite about entering into an agreement, and I would like to inquire into what the agreement will contain. It seems to me—

Exam. Linn (interrupting): The witness has told you there will be nothing definite about it, that the best he can indicate is that the volume by truck will be increased. Perhaps that is some weakness in the applicant's case, if that is the situation.

By Mr. Cronon:

Q. Will there be any contract executed between BOP and PMT, as far as you know?

Mr. Frizzell: I object, on the ground of repetition.

Exam. Linn: Will you read the question, Mr. Reporter, please?

(Last question read.)

Exam. Linn: I believe it's repetitious.

Mr. Cronon: You said "repetitious"?

Exam. Linn: Yes.

By Mr. Cronon:

Q. Mr. Barrett, once you have gone immediately from 60 to 75 per cent by truckaway, is it the proposal of your division and you to go to a hundred per cent eventually?

A. I think that the trend is definitely towards a hundred [fol. 402] per cent truckaway. We would probably point in that direction. I don't know that we would ever reach a hundred per cent fully. It depends on a lot of factors and conditions surrounding the business as it develops.

Q. What factors have you in mind, Mr. Barrett, when you say it depends on factors developing?

A. Well, there are a number of things, I feel, that go to make up a management decision as to whether to truck or to rail our business, and the preferences of the dealers is one of the factors, the difference in damages to the automobiles, the difference in transit time, and our decision within our own policies as to which we should use.

Q. First with reference to the preference of dealers, may I conclude from that that you will honor routing instructions from your dealers?

A. No, we do not.

Q. Then, what does the preference of dealers have to do with it?

A. Some dealers prefer truck, some dealers prefer rail, and if we can accommodate them within our facilities and our general policy, we do. If we can't, then they have to come next.

Q. Whenever a customer asks for rail routing and your division feels that it is O.K. as far as their policy is concerned, then you would honor the customer's routing, is that correct?



A. Yes, if it's within our policy and our facilities at the time.

Q. But it all adds up to this; that the final answer and [fol. 403] decision is with BOP?

A. That is correct.

Q. With respect to damages to automobiles, do you find that the manner of transportation varies amongst railroads, is that what you had in mind?

A. That the—?

Q. You said damages to automobiles was one of the other factors that you had in mind.

A. I didn't get your question, I am sorry.

Q. You said that was one of the factors that would determine whether you use truckaway or rail service.

A. Yes.

Q. Now, is there some variation in the manner of handling automobiles between railroads—?

A. If I understand your question properly, we load all of our automobiles at South Gate by rail and they are all switched out by the Southern Pacific Railroad.

Q. But isn't it a fact that at the present time your automobiles are being carried by the Southern Pacific with a very small percentage of damage, considering the over-all movement?

A. I would say that the damage is relatively small, yes.

Q. With respect to transit time, that was one of the factors that you mentioned, do you feel that there is going to be an improvement in the transit time via rail which might make your division decide that they should move certain [fol. 404] shipments via rail rather than truckaway?

A. I don't know what the rail is going to do about transit time.

Q. What did you mean when you said that transit time would be one of the factors that would help you determine whether or not you will use rail or truckaway?

A. I think generally speaking truckaway provides a better transit time, although there may be certain points or certain cases where rail would provide an even better transit time.

Q. Your BOP products, Mr. Barrett, are shipped out of

South Gate now into the destination territory proposed here, are they not?

A. Yes, we do ship into all the territory in the application.

Q. Is it the proposal of BOP, like the Chevrolet Division, to eventually take all of that business away from the railroads and put all of it on PMT trucks, if this application, that is, is granted?

Mr. Frizzell: I object on the ground of repetition, Mr. Examiner.

Exam. Linn: I believe it is repetitious, yes.

By Mr. Cronon:

Q. There are shipments, are there not, Mr. Barrett, moving out of your California plant to points within the proposed territory where the Southern Pacific Company gets only a switch movement, isn't that right?

A. That is correct.

Q. And would an example of that be a movement which [fol. 405] would be switched by the SP to the Santa Fe and moved north Santa Fe-Western Pacific-SP&S-Great Northern into Montana—that would be an example, wouldn't it?

A. I assume so. I am not familiar with the exact route.

Q. What have you to say with respect to the volume of shipments moving from your South Gate plant as of the latest period, if you have it for the year '56, the volume of shipments moving out of South Gate into the territory involved in this application?

Mr. Frizzell: Mr. Examiner, I don't quite understand the question. It's vague, rather vague, "what do you have to say about a certain thing?" I think he should direct a question to the witness.

Mr. Cronon: I will change it.

By Mr. Cronon:

Q. Do you know what the volume of shipments was in 1956 moving out of your plant at South Gate via rail into the destination territory involved in this application?

A. I don't have the figures with me, but there is another witness who will have them.

Q. Would that be true of the 1955?

A. I believe he has those. I am not sure about the times.

Q. But you don't have them, Mr. Barrett?

A. I don't have them here, no.

Q. Do you ship parts and frames from eastern Oregon points into South Gate?

[fol. 406] A. Parts and frames?

Q. Yes.

A. Not to my knowledge, no.

Q. Where do you secure the parts and frames which go into the assembly of BOP products?

A. Most of the parts come from the Michigan territory, the home plant territory. Our frames come from Milwaukee, Wisconsin, Cleveland, Ohio, and Reading Pennsylvania, I believe.

Q. Perhaps I didn't put my question to you too clearly. You do ship parts and frames from eastern origin points into South Gate, don't you?

A. Eastern origins?

Q. Yes.

A. Yes, that is correct. I thought you said "Oregon."

Q. And they are moving rail, aren't they?

A. Yes.

Q. A hundred per cent?

A. Practically so.

Q. Is it a fact that very little of parts and frames move over the northern transcontinental railroads?

A. That is a fact.

Q. And that the great majority of them move over the so-called central or overland route through Omaha to Ogden and then Southern Pacific into South Gate?

[fol. 407] A. That is right.

Q. Have you any familiarity with the discussions between, for example, the Great Northern and the Southern Pacific, with respect to the Great Northern applying for its own truck rights in its own territory, looking forward to a joint arrangement with the Southern Pacific for handling General Motors business out of California assembly points into North Pacific Coast territory?

Mr. Frizzell: I object. Improper cross-examination.

Mr. Cronon: I asked him if he knew.

Mr. Frizzell: But the predicate of your question was that there were such conferences and I don't think this witness knows whether there were or not. Rephrase the question.

Exam. Linn: You may answer, if you know.

A. I don't know of any such conferences, no.

By Mr. Cronon:

Q. Are any BOP products now being distributed in the state of Washington by Transport Storage & Distributing Company after a prior rail haul to Seattle?

A. I believe that there are, although I haven't seen any actual records on them.

Q. If they are so moving, that is done with your approval under your supervision, isn't it?

A. No, sir, it is not. Such shipments we would make to Seattle to a warehouse, and they can be consigned to a dealer from the warehouse or reconsigned without our knowledge or consent or us having anything to do with [fol. 408] it. We would ship the automobiles to Seattle only.

Q. And who would be the consignee, the ultimate dealer?

A. It could be the dealer in care of a warehouse there or it could be a zone office at Seattle proper.

Q. But, in any event, they would be franchised dealers under BOP?

A. Either franchised dealers or the zone office of the car division involved.

Q. I don't understand that. I am not familiar with that. Is that the GM zone?

A. Each of the three car lines which we build, Buick, Oldsmobile and Pontiac, have their own zone offices, so-called, which is part of their sales force, and a shipment of automobiles to Seattle could be consigned to the Buick Motor Division at Seattle or to the Joe Doakes Motor Company in care of the Buick warehouse at Seattle, and after that we would have no knowledge of the movement of the car.

Q. But some subdivision of BOP would be responsible for seeing that they get into the dealer's hands eventually, isn't that right?

A. Not if they went to the warehouse point at Seattle, no.

Q. If they went to the zone office, that would be true?

A. If they went to the zone office or the warehouse, we have no knowledge or connection with the following movement.

[fol. 409] Q. Well, then, to be sure I understand you correctly, once the cars reach Seattle, then BOP is no longer responsible for the transportation beyond that point, is that right?

A. That is correct. It has been delivered in line with the order given to us by the particular car line involved.

Q. Does your division pay for the unloading of automobiles at Seattle and the transportation to the warehouse only?

A. No. Our division pays to Seattle by rail, period.

Q. That is just an f.o.b. Seattle movement?

A. That is right.

Q. Has BOP any plans for additional assembly plants in California, in the California area?

A. At the present time we, I believe, own some property in the San Francisco area which has been purchased for the establishment of a new plant, but the plans for that plant have been deferred indefinitely.

Mr. Bieneman: May I have that last question and answer read?

(Last question and answer read.)

Mr. Cronon: That is all, Mr. Examiner. Mr. Burchell has some questions.

Cross examination.

By Mr. Burchell:

Q. You mentioned what you called "a sold car". Would that be a special order for some of these options of paint and equipment that you mentioned?

[fol. 410] A. It wouldn't necessarily be special, because each automobile is produced to a certain order.

Q. I should say, a customer's order.

A. Each automobile is produced to a customer's order.

Q. How long does it take to do that?

A. I am not exactly sure. It might vary with the destination point or the dealer point and how fast his order moves through the zone office procedure and through our plant and so on.

Q. My question was, how long does it take to produce a car to a customer's order, from the time you receive the order?

A. I would say that such a car could be produced depending on how fast we had to move, anywhere from 48 hours to two weeks.

Q. It might be as low as 48 hours and it might be as high as two weeks?

A. That is right. Normally I would say the two-week period is a little closer to it. But sometimes special cars are produced in a very short time.

Q. And that two-weeks period that you mention does not include the time necessary to move it back to the particular dealer, does it?

A. I would say that it could. It's indefinite enough so that I just can't answer it that way. The time would vary too much. The transit time might be two or three days and the two-week approximation could be that far off without any trouble.

Q. You answered Mr. Cronon with respect to a switch-  
[fol. 411] ing movement out of your South Gate plant by the Southern Pacific on a shipment routed to North Pacific Coast territory. On a shipment routed to Utah, say, Salt Lake, how would that shipment move by rail at the present time?

A. I believe it would probably be moving with a switch movement on the Southern Pacific and then via the Union Pacific Railroad from Los Angeles.

Q. It wouldn't move through San Francisco or Sacramento or over to Ogden and then back down to Salt Lake?

A. No, sir.

Mr. Burchell: That is all.



Cross examination.

By Mr. Farrell:

Q. Mr. Barrett, you are familiar with the scope of the authority being sought here from your South Gate plant, are you not?

A. With which authority?

Q. With the scope of the authority being sought from your South Gate plant?

A. Yes.

Q. And I note that some of the authority being sought from the South Gate plant goes over into the distribution area from your Kansas City and Arlington, Texas, plants, as shown on your Exhibit 23?

A. Yes.

Q. Can you explain that?

[fol. 412] A. The lines shown on our Exhibit 23 are, as I said, the normal distribution areas. We, as a rather standard matter, ship across those lines almost constantly, from one plant's area to another. If there are certain models we need and they are available in one plant and not in the next plant, we will overlap the shipments. As a matter of fact, we already have the authority to serve Arizona by truck, for example, from our Texas plant and we would like to have it from South Gate so that we could do this overlapping business and provide business into Arizona from here, too.

Q. Isn't it a fair statement, then, if this application is granted, that the distribution area of the South Gate plant will expand?

A. No, I would say that it will not change actually.

Q. You operate within this distribution area a number of warehouses, do you not, for the distribution of your product?

A. Yes.

Q. You operate, for example, a warehouse at Seattle?

A. We do not operate it, no. That is a private operation, not run by General Motors, as such. I believe that the—

Q. (Interrupting) It's run by a subsidiary of General Motors?

A. No. I believe that the warehouse is run by an individual, or maybe a company, the Transport Storage Company or something like that. But the operation of the zone offices, for example, at that point, which use the warehouse, is in the individual control of Buick, Olds or Pontiac [fol. 413] Divisions, not within BOP.

Q. Have you ever heard of a company at Seattle called the Argonaut Realty Company?

A. Argonaut Realty is a division of the General Motors Corporation.

Q. And that is a company that does the warehousing at Seattle, is that correct?

A. I really can't say for sure. I don't know. I know that they make arrangements for such warehousing, but if they operate the warehouses, I don't know that.

Q. But within this distribution territory, through other divisions of the General Motors Corporation, you operate other warehouses?

A. I would assume, yes. I don't know about the other divisions.

Q. And do you have any information as to the policy of how many days' supply of cars will generally be kept on hand at these various local warehouses?

A. No, sir.

Q. Or could you give us any such information with respect to the supply kept on hand at the factory, of finished products, how many days ahead that is projected?

A. We keep the supply at the factory as low as possible, less than a day if we can do it.

Q. And you specifically requested, did you, that PMT apply for a contract carrier authority?

[fol. 414] A. We did, or I did.

Q. And it was your intention that PMT would haul for no other manufacturer than BOP?

A. That is correct, BOP or Chevrolet. They haul for General Motors.

Q. Of course, as a contract carrier, they could enter into a contract to transport for another manufacturer, could they not?

A. They could, yes. We like to employ contract carriers.

though, whom we feel are dedicated to our service and not to other people.

Mr. Farrell: That is all. Thank you.

Cross examination.

By Mr. Andersen:

Q. You stated that BOP Division of General Motors will honor the request of a dealer as to the shipment of the automobiles involved if that request is within the policy, within the keeping of the policy, of General Motors at that time, if I understood your testimony correctly. Is that correct?

A. We will honor a request within our policy limitations for truck or for rail but not for specific truck.

Q. In view of the trend developing, the developing trend of the policy of General Motors to truck away as many automobiles as possible from their assembly plants, is it not a fair statement that, especially if the Commission should see fit to grant this application, that the number of requests [fol. 415] of the dealers to ship by rail would be increasingly smaller in the very near future? Is that a fair statement?

A. I don't know that to be a fair statement of fact, no. We really have very few requests one way or the other.

Q. Are you aware, Mr. Barrett, of any specific instances in any of the plants such as Doraville, Georgia, where 100 per cent of the automobiles are trucked away, of any requests by any shippers to have their automobiles sent to them by rail?

A. I am not familiar with any requests in recent years, no.

Mr. Andersen: I have no further questions.

Cross examination.

By Mr. Jacobson:

Q. I understood you to say a moment ago you had very few requests one way or the other—

A. That is, concerning rail shipments.

Q. Oh, not truck?

A. That is right.

Q. Are you familiar with the fact, or is it not a fact, that for the past two or three years there have been constant requests by your dealers in Arizona for truckaway service via existing facilities?

A. I have not heard of any requests by Arizona dealers for truckaway service on existing facilities.

Q. Have they requested, to your knowledge, truckaway service?

A. I understand that they have, yes.

Q. Have you become familiar with the fact that your [fol. 416] South Gate plant has been solicited continuously by existing carriers offering their facilities to transport your cars to points—

A. (Interrupting) I do not know that they have been continuously solicited, no.

Q. Do you know that the tariffs of the various carriers have been requested and have been on file in your office for a number of years?

A. I don't know that, no.

Q. Has your traffic director at South Gate advised you that there has been a solicitation of your business to the points that the carriers are authorized to serve?

A. No. There has been mentioned that there has been some solicitation, but it has not been specific, and I don't recall which company or companies it was.

Q. I infer from that that you weren't sufficiently interested to investigate?

A. That is correct.

Q. What, if any, investigation have you made of the existence of present truck contract or common carrier operations available to you to serve any or all the portion of the territory now sought by PMT?

A. I haven't made any.

Q. Have you requested that investigation be made, as traffic director?

A. No.

[fol. 417] Q. And I infer from that that you weren't interested?

A. That is correct.

Q. Notwithstanding the fact that you say the dealers are requesting truckaway service?

A. That is right.

Q. How long have you been familiar with the fact that dealers in the western states desired truckaway service?

A. Our complaints have been coming to us the last couple of years, I would say.

Q. And, as a result of that, you have availed yourself of truckaway service wherever you could on PMT, is that correct?

A. That is right.

Q. Then, why is it that you ship so extensively in the state of California by rail out of your plant, where PMT now has truckaway rights?

A. Well, our facilities govern that to some extent.

Q. Your what?

A. Our facilities govern the distribution of the tonnage to some extent and we feel that the longer hauls in California are somewhat comparable with the hauls to the other states, and for that reason we would like to, policy-wise, at least, sort of handle the thing in one bundle.

Q. What percentage of this 50 per cent that is now moving rail moves entirely within the state of California?

A. I don't have an exact figure on that.

[fol. 418] Q. You are familiar with the fact that PMT engages extensively in truckaway automobile movements in the state of California, are you not?

A. Well, they certainly haul a lot of automobiles for us in California.

Q. Knowing that the customers prefer truckaway service, why haven't you given PMT your movements in the state of California?

A. As I say, some of the California hauls are quite long and the establishment of service to those points would involve probably a change in some of the equipment required to haul the business, and we tie it in with the rest of the states which we now want them to do for us.

Q. Are you familiar with the equipment that PMT is operating?

A. Yes.

Q. You know that they are using standard Durability trailers, the same as the other carriers?

A. I don't know of the specific name, no.

Q. Do you know of any special facilities that they have that are not used by other carriers?

A. That I don't know. I do know that we apprise them of our new models and the difficulties involved in loading them and expect them to make their equipment fit the new model, including tie-down arrangements, which we point out to them.

Q. As traffic manager, you know that procedure is no different than any other assembly plant uses with a carrier?

[fol. 419] A. I wouldn't know.

Q. You mean, you are not familiar with what other carriers—?

A. You mean, in General Motors?

Q. Yes.

A. All assembly plants in our division do the same thing.

Q. Your competition, manufacturers of other cars, do the same thing?

A. Yes.

Q. They apprise the carriers of changes in models?

A. I don't know. I assume they should.

Q. You say, you don't know?

A. I don't know.

Q. They naturally would, they would be expected to apprise a carrier who transports their products what the changes in their products would be?

A. If they have any respect for their product, I would expect so, yes.

Q. Why do you ship rail from the BOP plant to the San Joaquin Valley, which is halfway between Los Angeles and San Francisco?

A. Of course, as I testified to sometime ago, we were planning another plant in California and that, too, became a part of our plans in this over-all picture.

Q. So there hasn't been an urgent demand for truckaway service, has there?

A. There has been a demand over the past two years for



[fol. 420] truckaway service, and sometimes more urgent than at other times.

Q. I will ask you, as traffic manager, where the line of demarcation between shipping truck and rail out of the South Gate plant within the state of California is.

A. I couldn't state the line specifically. As far as north and south is concerned, I think it's about in the area of Fresno.

Q. And Fresno is approximately 200 miles from South Gate?

A. I don't know. You are saying it, not me.

Q. Well, take my word for it.

A. All right.

Q. And you are comparing a 200-mile haul, by your last statement, with a haul into Montana and Idaho and points distant like that, aren't you?

A. How far is Phoenix, for example?

Q. Phoenix is 440 miles.

A. Well, that is comparable, I would say.

Q. You consider that comparable?

A. Yes.

Q. Well, you have had truck service available for this 200-mile haul. If there was such an urgent demand for it, why have you not utilized PMT facilities in the state of California?

A. I tried to explain to you a little while ago that it will require, we think, a change in equipment by PMT. We think that to serve these longer hauls efficiently and economically they are going to have to change from smaller rigs, to, shall we say, larger rigs, to haul more automobiles on them.

Q. Why didn't you ask them to change the equipment?

A. Because of the tie-in with the new plant, the expansion to other states and the whole problem.

Q. As an officer of General Motors, you know that the acquisition of a new plant is a matter of very recent, within the past six months, time, isn't it?

A. Perhaps the acquisition of the property, yes.

Q. When did you first use that acquisition of the property as a factor to determine not to use PMT truckwise in California?

A. We have been studying the location of a plant in this area for some five years.

Q. So I infer from that that there is no great hurry for truck service, if you waited five years within which to ask them to change over their equipment?

A. I repeat, the urgency increases and decreases as time goes by, Mr. Jacobson.

Q. Well, suppose, let's assume, that the Commission should refuse to grant the authority sought by PMT. Do you intend to, first, continue to ship to points north of Fresno via rail, as you do now?

A. No.

Q. What are you going to do?

A. We will attempt to secure another contract carrier. [fol. 422] Q. You won't use PMT?

A. Not if they don't have the authority, no.

Q. They have the authority now.

A. To Fresno, you say?

Q. All of California.

A. You had better repeat the question.

Mr. Jacobson: Repeat the question.

(The reporter read as follows:

"Question: Well, suppose, let's assume, that the Commission should refuse to grant the authority sought by PMT. Do you intend to, first, continue to ship to points north of Fresno via rail, as you do now?")

Mr. Frizzell: Mr. Examiner, I—

Mr. Jacobson (interrupting): Just a moment.

Mr. Frizzell: I think I will pose an objection, that you are belaboring the point a little bit, Mr. Jacobson.

Exam. Linn: I believe it has exhausted its importance as far as this record is concerned.

Mr. Jacobson: I desire to pursue it along another line.

Exam. Linn: Will you reframe the question?

Mr. Jacobson: Yes.

By Mr. Jacobson:

Q. What investigation, if any, have you made, as general traffic director of BOP, as to what authority PMT has at the present time?

Exam. Linn: What difference does that make? Let's advance our own record here.

Mr. Jacobson: I thought I was advancing the record. I might be belittling the record, but I am advancing it.

By Mr. Jacobson:

Q. What percentage, do you know what percentage of the 50 per cent that is moving via rail out of BOP-South Gate is moving in California?

Mr. Frizzell: Just a minute. Pardon me.—

Mr. Jacobson: If you have somebody else who has those records—

Mr. Frizzell: Phil, the local traffic manager will be here with some specific figures.

Mr. Jacobson: In other words, I am to understand that this witness doesn't know?

The Witness: I have already answered, to that effect.

By Mr. Jacobson:

Q. You don't know?

A. I say, I don't have the figures with me.

Q. Is it possible, from your investigation, when you arrived at the figure, that immediately you go from 60 to 75 per cent, that what you will actually do is give PMT the traffic they could have enjoyed for a long time in California?

A. That is not correct, no.

Q. So the 15 per cent will be the over-all increase you are going to give them?

A. That is the over-all immediate increase.

Q. Now, do you subscribe—well, perhaps I had better [fol. 424] ask you a direct question. Assuming the Commission, the Interstate Commerce Commission, should refuse to grant this authority or delay it for a couple of years, what is your company going to do with respect to getting truckaway service? Will you use the existing facilities?

A. No, sir.

Q. You wouldn't use any of the protestants in this case, is that correct?

A. That is correct.

Q. And you make that observation without knowing what they have, what they offer, their facilities or their territory?

A. That is correct.

Q. Where are you going to find this truckaway service? Is General Motors going in the trucking business for BOP?

A. If we are unable to get it, or rather PMT is unable to get it, and we are unable to have another contract carrier get a similar authority or permit, then we will consider doing it ourselves, yes.

Q. You are not here complaining about the ability of the existing facilities to render you service, are you?

Mr. Frizzell: I object. He hasn't testified he knows anything about the existing services.

Mr. Jacobson: I think it's pertinent.

Mr. Jacobson: I urge the question. It's a direct question.

Mr. Johnson: Would you mind reading the question?  
[fol. 425] Did you say "existing facilities"?

(Last question read.)

By Mr. Jacobson:

Q. You are not here complaining about the inability of existing authorized carriers to render a service into the territory they are authorized to serve, are you?

Mr. Frizzell: I object to that because he hasn't testified that he knows anything about existing services. So actually he has not said that he is not complaining or that he is complaining.

Mr. Jacobson: I will submit it to a ruling.

Mr. Johnson: I would like to join in the objection. The question is not clear. Does "existing carriers" include the PMT?

Mr. Jacobson: No, I exclude the PMT.

Mr. Johnson: It is an existing carrier.

Mr. Jacobson: There seems to be some question about it.

Exam. Linn: The witness may state whether he has any complaint concerning carriers other than PMT.

Mr. Jacobson: That is correct.

A. No, I haven't had any complaint, because we have had no experience with them.

By Mr. Jacobson:

Q. You know that, as a matter of fact, on occasions authorized carriers have moved vehicles out of your South Gate plant to the adjoining states, don't you?

A. No, I don't believe so. I understand that there was a [fol. 426] shipment which moved from somewhere near our South Gate plant to Arizona.

Q. Moved satisfactorily, wasn't it?

A. I really couldn't say. I wasn't on the other end and didn't know it had happened until afterwards, Mr. Jacobson.

Q. And after you found out what had happened you didn't get any complaints, did you?

A. No.

Q. Was it a mistake that he got the car?

A. I think it probably was.

Q. As I understand it, at the South Gate plant—that plant is owned by the General Motors, isn't it?

A. That is right.

Q. And the rail siding comes onto the property of the South Gate plant, doesn't it?

A. Yes.

Q. Is the rail siding an easement owned by the Southern Pacific?

Mr. Frizzell: I object. I think that is improper cross-examination.

Mr. Jacobson: I think it's pertinent. I will tie it up.

Mr. Frizzell: He went into this thing with Mr. Booth and Mr. Booth gave him the facts about it.

Exam. Linn: The witness may answer, if he knows.

The Witness: I don't know.

By Mr. Jacobson:

Q. What, if any, other railroad besides Southern Pacific [fol. 427] serves your property?

A. Southern Pacific is the only one serving our property.

Q. You testified that insofar as the release of automobiles is concerned, you leased and subleased—do I infer from that that you are leasing that parcel of property from a third party?

A. Yes. We lease the property on which PMT is located from the Southern Pacific Railroad.

Q. You lease the property from the Southern Pacific Road?

A. That is correct.

Q. And you sublease it to PMT?

A. That is right.

Q. Under a written lease?

A. That is correct.

Q. Do you know what the rental is?

A. I am not familiar with the figures.

Q. Is that lease available here in the courtroom?

A. I don't know that for sure.

Q. Have you ever seen it?

A. I have seen it. I have a copy of it in my files at home, yes.

Q. Do you know whether the rental charge to the PMT is comparative with rental for similar facilities in the same area?

Mr. Frizzell: I object.

Mr. Jacobson: Just let me ask the question, please.

Mr. Frizzell: The first three words were objectionable.

[fol. 428] Mr. Jacobson: Extend me the courtesy of allowing me to ask the question.

Will you read the question, please.

(Last question read.)

Mr. Frizzell: He can't answer that question, because he just stated on cross-examination that he didn't know what the figures were.

Mr. Jacobson: He said he had the lease, but it wasn't with him.

Mr. Frizzell: He testified that he didn't know what the figures were. How can he make a comparison?

Mr. Jacobson: Will you agree to submit the lease so we can look at it?

Mr. Frizzell: No.

Mr. Jacobson: I think it's pertinent to the issues to this case.

Mr. Frizzell: I do not.



Exam. Linn: Do you have any further questions of the witness?

Mr. Jacobson: Can I get an answer?

Exam. Linn: The witness said he didn't know what the rental was.

By Mr. Jacobson:

Q. How long is the lease for?

Mr. Frizzell: I object, as immaterial to this proceeding.

Exam. Linn: Overruled.

A. The lease is for a period of five years, with a renewal [fol. 429] option for five years.

Q. Does General Motors reserve the right to have ingress or an egress for their own vehicles or for any designated vehicles over that property?

A. I am not familiar enough with all the print to know.

Q. As I understand it, you lease this property from the Southern Pacific and sublease it to PMT. Is the rental that you pay the Southern Pacific the same rental that you charge PMT?

Mr. Frizzell: I object, Mr. Examiner.

Exam. Linn: The witness may answer it, if he knows.

A. I believe that that is the case, it's precisely the same.

By Mr. Jacobson:

Q. As traffic director, can you tell me the advantage of your leasing the property and then subleasing it, insofar as your operations are concerned?

A. We have along with the lease arrangement an option to purchase the property, which we intend to do, so that it will become the same as the rest of our plants.

Q. Do you reserve the right, or have you the right, to advise PMT that you want another carrier to traverse that property to come to your receiving gate?

A. Without having all the terms of the lease here, I cannot answer the question, no.

Q. Is there any other method by which cars can move

from your delivery gate to a public highway, other than over the property of Southern Pacific leased to PMT?  
[fol. 430] A. No, that is the only way we can get to the public highway.

Q. Haven't other carriers, or do you know whether other carriers have, gone over that property to receive vehicles for the government, on government bills of lading?

A. We do not make government bill-of-lading shipments from South Gate plant.

Q. Due to your familiarity with the traffic situation, don't you know it to be the fact that PMT, as a truck carrier, as a common carrier, delivers parts into the South Gate factory and likewise takes parts from the South Gate factory for delivery to dealers throughout the state of California?

A. To the best of my knowledge, PMT as a common carrier does not serve the South Gate plant either inbound or outbound.

Q. What investigation have you made of that, if any?

A. I have inquired from our plant traffic manager.

Q. How recently?

A. Within the last week.

Q. Within the last week?

A. Yes.

Q. And he told you they didn't, is that it?

A. That is correct.

Q. Is that the witness who is going to be here?

A. He will be on the stand.

Mr. Jacobson: Go ahead.

Cross examination.

[fol. 431]

By Mr. Smith:

Q. Mr. Barrett, what make of car does General Motors manufacture at its plant at Lansing, Michigan?

A. Oldsmobiles.

Q. Do you know what truck companies transport Oldsmobiles from Lansing, Michigan, to points throughout the United States?

A. Not specifically. They have two or three carriers, and I don't know all the official names of them.

Q. To refresh your memory or recollection, do you know of a company called "Howard Sober, Inc."?

A. Yes, I believe they serve Lansing—that is one of them, I am familiar with that name, yes.

Q. Did you likewise know that Howard Sober, Inc., was a common carrier and not a contract carrier?

A. Yes.

Q. Do you likewise know that Howard Sober, Inc., in addition to hauling Oldsmobiles as a common carrier, also hauls all other makes of cars?

A. So long as he is a common carrier, I assume that he could. I don't know that he does, though, no.

Q. You don't know that he does. Did you ever hear of a motor carrier called "C & J Commercial Driveaway, Inc.", of Lansing, Michigan?

A. Yes.

Q. Did you know that they are a common carrier?

A. I understand they are, but I don't really know of my [fol. 432] own knowledge.

Q. Do you know that they likewise haul Oldsmobiles out of Lansing?

A. I, of my own knowledge, no, I don't know that.

Q. Did you ever hear of a motor carrier in Lansing by the name of "Industrial Transports, Inc."?

A. Yes.

Q. Did you know that they were a common carrier?

A. I have so heard. I haven't checked their authority.

Q. Did you know that they also haul Oldsmobiles?

A. I believe they do.

Q. Did you know or do you know that those three carriers, in hauling Oldsmobiles as common carriers out of Lansing, Michigan, not only transport Oldsmobiles in direct single-line service, but also in two-line or connecting carrier service?

A. I don't know that.

Q. What make of General Motors passenger car is manufactured at the GM plant at Flint, Michigan?

A. I believe that Buicks are manufactured in one plant and Chevrolets in another.

Q. Referring to the Buick plant, do you know the motor carriers that are serving the Buick plant?

A. I believe that Boutell is one of them.

Q. The F. J. Boutell Company, is that the one you are referring to?

[fol. 433] A. Yes.

Q. That is one of them. Now, the Boutell Company is a common carrier, is it not?

A. Yes.

Q. And that company likewise hauls for, hauls cars and trucks for, other manufacturers?

A. I don't know.

Q. What other carrier do you know that serves the Buick plant at Flint?

A. I believe there is another one called "Automobile Carriers", I think is the name of it, "Carriers" or "Shippers", I am not sure.

Q. That is "Auto Carriers"?

A. Yes.

Q. And they are a common carrier?

A. Yes.

Q. And what General Motors cars are manufactured—

Mr. Smith: Strike that.

By Mr. Smith:

Q. What General Motors product is manufactured at Pontiac, Michigan?

A. The Pontiac automobiles and General Motors trucks, I believe.

Q. And do you know the motor carriers that transport the Pontiac automobiles out of the Pontiac plant?

A. I believe that the F. J. Boutell Driveaway Company is one and I believe Contract Cartage is another one. I am [fol. 434] not sure about Contract.

Q. Contract Cartage, despite its name is a common carrier rather than a contract carrier, is it not, Mr. Barrett?

A. So I understand.

Q. Can you recall any others?

A. Motor Car Transport, I believe, is another one.

Q. And that is a common carrier?

A. Yes, sir.

Q. And those common carriers, did you know, likewise transport other makes of automobiles?

A. I would assume so.

Q. Doesn't General Motors manufacture a truck at Pontiac?

A. Yes.

Q. What is the name of that division?

A. It's the General Motors Truck & Coach Division, I believe, is the official name.

Q. They make buses there also, do they not?

A. That is right.

Q. And do you know the motor common carriers that are transporting the trucks and buses out of Pontiac?

A. I am not so familiar with them. I couldn't give you the proper names. There is an "Industrial" or something like that—

Q. Did you ever hear of Truckaway Corporation?

A. Yes, I believe that is one of them.

Q. Is that one of the carriers?

[fol. 435] A. I think so.

Q. Is that a common carrier?

A. As far as I know, it is. I don't really know.

Q. Did you ever hear of a motor carrier called "Fleet Carriers, Incorporated"?

A. Yes, the name is familiar.

Q. Doesn't that company haul the GMC trucks and buses out of Pontiac?

A. I believe so.

Q. And that company is a common carrier?

A. As far as I know, they are, yes.

Q. What General Motors cars are manufactured in Detroit, Michigan?

A. Cadillac, I believe, is the only one.

Q. And do you know the Cadillacs are transported—

Mr. Smith: Strike that.

By Mr. Smith:

Q. Do you know what motor carriers transport the Cadillacs from Detroit?

A. I am not familiar with their distribution system in Detroit.

Q. Did you ever hear of my client, Western Auto Transports, Inc.?

A. Only as a name.

Q. If that is all you know of them, I suppose you wouldn't know that for the past 20 years they have transported Cadillacs from Detroit to points in all the 11 western states? [fol. 436]

A. I wouldn't know that.

Q. You wouldn't know that?

A. No.

Q. Did you know that Western Auto Transports, Inc., was a common carrier?

A. No, I don't know enough about them to know that.

Q. Did you know that they presently hold authority to transport new automobiles from South Gate to all points in Utah?

A. I don't know that, no.

Q. Has any representative of Western Auto Transports, Inc., ever solicited your South Gate traffic?

A. I don't know that. You mean at South Gate, I assume?

Q. Yes.

A. I don't know.

Q. Are you aware of the fact, sir, that there is now an application pending before the Interstate Commerce Commission in which Howard Sober, Inc., and Industrial Transports, Inc., and C & J Commercial Driveaway, Inc., are seeking authority to transport passenger cars from Lansing, Michigan, by the truckaway method to all points in the 11 western states?

A. I understand there is such an application, yes.

Q. There has been a partial hearing on the application which has already been held in Washington, D. C., has there not?

A. I believe that is correct, although I wasn't there.

Q. That is correct. I was.

[fol. 437] Q. If it is a fact that General Motors Corporation, out of its plants in Lansing, Flint, Pontiac and Detroit, Michigan, uses motor common carriers in both single-line and two-line service, how can you reconcile your testimony and the testimony of Mr. Lynch to the effect



that it is a policy of General Motors Corporation not to use common carriers?

A. I don't think that Mr. Lynch or I spoke for General Motors Corporation, as such. Each division of the corporation handles its own transportation. And the application that you are talking about is from the home plants of Buick, Olds and Pontiac?

Q. That is right.

A. Those are separate divisions of the corporation and have no connection, actually, traffiewise with BOP or Chevrolet.

Q. Why would it be necessary that a Chevrolet be transported by a contract carrier and couldn't be transported or shouldn't be transported by a common carrier, while at the same time an Oldsmobile or a Cadillac can be transported by a common carrier and not by a contract carrier?

A. I can hardly speak for Chevrolet on that matter.

Q. You mean, you can't answer that question?

A. That is right. Not on behalf of Chevrolet, I cannot answer it.

Q. Why is it, can you explain this to me, that General Motors Corporation has to transport an Oldsmobile out of Lansing by a common carrier, but at the same time, with [fol. 438] the same type of car, Oldsmobile, out of South Gate by a contract carrier?

A. Frankly, I think the poor guys at Lansing are stuck with what they have got.

Q. I just got through hearing the traffic manager of the Oldsmobile plant at Lansing, Mr. Corbin, testify down at Washington last month as to the extremely satisfactory service, common carrier service, that he had to the territory in which his carriers were authorized to serve. Will you disagree with Mr. Corbin?

Mr. Frizzell: I object, Mr. Examiner, to that question.

A. I wasn't there.

Mr. Jacobson: Well—

Mr. Smith: If you want to ask the questions you want, you ask them. I will ask the questions I want, Mr. Jacobson.

I have just one or two more.

By Mr. Smith:

Q. Did you request the applicant in this proceeding to file this application?

A. I did.

Q. Did you or anyone in your company request any other motor carrier or motor carriers to file a similar application or applications?

A. No, sir.

Q. As to what determines your choice of whether to use motor carrier service or rail service, sir, isn't the determining factor the factor of rates?

[fol. 439] A. That is only part of the factor, one of the factors. There are many factors involved in making that decision.

Q. I know, but isn't rates a very substantial factor?

A. I don't think it's any more substantial than service and these other factors at all, no.

Q. You wouldn't concede that it is the controlling factor?

A. I would not. As a matter of fact, we ship—

Q. (Interrupting) I just asked you that question—that is all.

Mr. Johnson: Let the witness complete his answer.

By Mr. Smith:

Q. Do you want to explain your "no" answer?

A. I would like to explain another example of that same policy.

Q. I didn't ask you for an example. I just asked for a "yes" or "no" answer. I don't think it needs any explanation.

Mr. Smith: I asked him if he agreed with me and he said no. I don't think it called for an explanation. I didn't ask him why he didn't agree with me.

The Witness: After all the time you have wasted, can I waste two minutes?

Exam. Linn: Go ahead, Mr. Barrett.

By Mr. Smith:

Q. Go ahead, Mr. Barrett.

A. As a matter of fact, from our Kansas City plant we are presently shipping automobiles by rail at a greater cost to us than we could ship them by truck, so that the cost is not a determining factor.

Q. Do you think I have wasted my time in cross-examining you?

[fol. 440] Exam. Linn: Now we are going to waste it.

Are you finished, Mr. Smith?

Mr. Smith: That is all.

Exam. Linn: We will take about a five-minute recess and continue until 12:30.

(Short recess.)

Exam. Linn: We will be in order.

Mr. Smith: With Mr. Frizzell's permission, may I ask the witness a few more questions?

Exam. Linn: Go ahead.

By Mr. Smith:

Q. Mr. Barrett, when I asked you whether or not rates was the controlling factor in determining whether you ship by rail or by truck, in explaining your negative answer you cited an example or referred to a case where the truck rate was higher than the rail rate, but you used rail. Out of what points and to what points does that situation exist today?

A. I don't believe that was quite the answer.

Mr. Cronon: You had it turned around, where the rail rate was higher than the truck rate.

By Mr. Smith:

Q. Where the rail rate was higher than the truck rate, and you used the rail service?

A. Yes.

Q. Out of what point?

A. Kansas City, Kansas.

Q. To where?  
[fol. 441] A. It would be hard to name particular points, but I would say generally into the northwest part of the Kansas City area.

Q. Was that because the truck service was too poor to those points, that you didn't want to use it?

A. No. We do use truck service there, too.

Q. One more point. You said that you felt sorry, or the poor boys up in Michigan were stuck with common carrier service and that is why they used it. Isn't it a fact, Mr. Barrett, that at Flint, Michigan, the Chevrolet plant has contract carrier service available and the Buick plant has common carrier service available?

A. I understand that is correct, yes.

Q. Then, why doesn't Buick make a contract with the Chevrolet contract hauler?

A. I was employed by Buick from about 1929 to—I am sorry, from '32 to '41, and at that time the operators who are serving the Buick plant, now were serving that plant, the truckaway operators, and did ship by truck and by rail, and the assembly plant policy of using contract carriers was established sometime after that, so that we did not want to toss out an old supplier friend.

Q. This old friend to which you refer, this common carrier, isn't it a fact that about two years ago that old friend sold out to another carrier?

A. Are you referring to—?

[fol. 442] Q. Walter Carey purchase of the operating rights, a portion of the operating rights, of Motor Car Transport.

A. Walter Carey, I believe, was working for Motor Car Transport when I was at Flint, so he is still our old friend, I believe.

Q. He is a friend of mine, too.

Mr. Smith: That is all.

Mr. Handler: I have no questions.

## Cross examination.

By Mr. Bieneman:

Q. As to this situation in California north of Fresno, isn't it a fact simply that the rail rates are the same to San Francisco as they are to Fresno, so that from 200 to 400 miles you can ship the cars for the same rate?

A. I don't know that the rates are the same to both points, no. I don't know that they are the same.

Q. You know that basically that is the reason that you use rail service into northern California, because the rate situation is such that the trucks can't compete with small equipment, isn't that right? Isn't that true?

A. Yes, the equipment, I believe, does make the difference.

Q. And if the PMT saw fit to utilize larger equipment that would haul six automobiles, as you have indicated, then probably the truck rates could be put on a par and you would use the truck service, isn't that true?

A. I believe that is true, yes.

Q. How long has that situation existed, where apparently [fol. 443] there has been no effort on the part of the PMT to put on this type of equipment that you say would be suitable to compete with the rail rates?

A. In our judgment, it's just a bit of a question as to whether that equipment should be put on for that part of California, and we have preferred to make it a part of this project to expand the truck service in to the rest of the states.

Q. What you mean by that, I think, is that you don't know whether there is sufficient volume into that area in California alone to justify the cost of purchasing and maintaining that equipment, isn't that right?

A. Or perhaps two types of equipment, yes, that is generally the case.

Q. But if the PMT gets this other territory and therefore a larger volume of traffic on long hauls, then you feel that it would justify acquiring this other type of equipment and the cost could be spread over a greater volume of traffic?

A. Yes.



Q. There is no practical reason at the present time why the PMT could not acquire that equipment into northern California if they sought to do so, is there?

A. No.

Q. And there is no practical reason why you could not use the PMT's existing truck service to northern California with their small equipment, is there?

[fol. 444] A. No.

Q. The only reason, then, is rates, isn't it?

A. They would still have to purchase some additional equipment. They couldn't serve the balance of California with their present fleet.

Q. Then, basically the only reason that you are not using the truck operation from Fresno north is an issue of rates, is it not?

A. I would say that it involves more than the rates.

Q. What more?

A. The things that I have mentioned before, the matter of deciding, first, getting an answer to this application and deciding whether the, balancing the complaints, the policy, the service and all the rest of it together.

Q. Let me put it to you this way: If the PMT could offer you today, on their present smaller equipment, rates comparable to rail rates into northern California, would you then use the PMT service?

A. I don't know. I haven't considered that actual matter.

Q. At the present time, I take it, PMT rates into northern California are substantially higher than the rail rates, are they not?

A. I believe they are.

Q. Are you at all familiar, Mr. Barrett, with the circumstances surrounding the rail rate reductions from the Los [fol. 445] Angeles area into Arizona, as to which I questioned Mr. Lynch.

A. I understand they have made some reductions, yes.

Q. Do you recall at the time those reductions were proposed in September 1955 whether you or anyone in the BOP Division made any representations to the railroads to the effect that those reductions were required in order to avoid diversion of traffic to competitive motor carriers?



A. No, such a representation was not made. We pointed out to the Southern Pacific that we felt their rates were a little high and they took the action in reducing the rail rates, but there was no threat of diversion.

Q. And you recall also, do you not, that after that matter was set for hearing in January or February of 1956 the railroads withdrew those reductions without going to hearing?

A. I believe they did, yes.

Q. And was it within thirty days thereafter that you requested them to file this application for truck rights into Arizona?

A. We have made no request for them to file truck rights into Arizona, up until this point.

Q. That was Chevrolet, I am sorry. That was not BOP, was it?

A. That is correct.

Q. You indicated that you did tell them in September of 1955 or at sometime thereabouts that you thought the rail rates were too high. In your best judgment, was that the factor that caused the railroads to make the publication of [fol. 446] those reduced rates at that time?

A. I really don't know whether it was their main factor or not.

Q. After they withdrew those reduced rates, leaving in effect the then-existing rates, did you divert any traffic from rail to any truck service?

A. No, we did not.

Q. I think you said that you did indicate that the rates at that time, in your opinion, were too high. Did you mean by that too high in relation to truck rates?

A. Too high in relation to either the existing truck rates or truck rates as they might be made, provided we had some authority for PMT to serve that territory. You see, we had been considering this problem for sometime and those rail rates—

Q. Isn't it true that after those reductions were withdrawn the Southern Pacific turned around and, in lieu of those reductions, made you an allowance for unloading and delivery of the automobiles at destination points?

A. No, I would say that, so far as I know, there is no connection between that and the unloading allowance. That was something brand new to us. We hadn't even discussed it with them.

Q. I didn't mean that they were necessarily discussed, but the thing that followed withdrawal of the reduced rates was an allowance at the unloading point, was it not?

A. I believe it was. As a matter of time, it was afterwards. I don't know what the connection was.

[fol. 447] Q. Did the fact that the railroads published that allowance at destination have anything to do with your failure to use competitive truck service?

A. No.

Q. In other words, whether you would have that allowance or not, you would still continue to use the rail?

A. That is correct.

Q. At least, as a matter of history, and regardless of what the reasons might have been, you now have from the railroads an allowance both at origin and destination covering alleged costs of loading and unloading, do you not?

A. I believe we have that to some destinations, yes.

Q. And the basic purposes of those allowances, at least so far as the railroads are concerned, is to attract the traffic to them in view of the fact that you have to perform loading and the dealer has to perform unloading?

A. I believe that is the reason for it, yes.

Q. Can you give me any idea, on the basis of this application, if granted, what truck rates are proposed, in relation to the existing rail rates, in territories outside of California itself?

A. No, sir, I can't tell you what they might be.

Q. If, for example, the rates that are established by the PMT were on a scale similar to those which exist in northern California, would you then use PMT at that higher [fol. 448] rate or would you continue to use rail at the lower rate?

A. I am sure we would use PMT if the other conditions warranted it, yes.

Q. What do you mean by that?

A. Transit time and the better handling of the automobile, all the other factors that I talked about.

Q. If those factors are important to you, rather than the rate, why is it you haven't made use of that very excellent truck service into northern California?

Mr. Frizzell: It's been asked and answered, Mr. Examiner.

Exam. Linn: Sustained.

By Mr. Bieneman:

Q. Do you have any idea how much investment in truck equipment would be required if you were to give the PMT the traffic into northern California which is now moving by rail?

Mr. Frizzell: I object, as there having been laid no foundation for that kind of a question. Mr. Booth testified about those factors for PMT and I don't see how Mr. Barrett could possibly contribute anything in that connection.

Mr. Bieneman: To avoid a lot of argument, I will reframe the question. I don't want to ask Mr. Barrett about PMT's business.

Let's put it this way:

By Mr. Bieneman:

Q. Can you tell me what the approximate volume is, that is moving by rail, to points north of Fresno?  
[fol. 449] A. I don't have that figure, no.

Mr. Bieneman: That is all.

Mr. Beardsley: No questions.

Cross examination.

By Mr. Singer:

Q. Do you have interstate contract carrier service available at each of the assembly plants shown in Exhibit 23?

A. Except for South Gate, California, yes.

Q. PMT is authorized to perform some interstate services as a contract carrier from that plant, are they not?

A. I believe only to the ports, and we have none of that type of business.

Q. With the exception of PMT, are all of the assembly plants shown on Exhibit No. 23 served by motor contract carriers who are not affiliated with or controlled by a railroad?

A. I believe that is correct, yes.

Q. They are all independent motor carriers, are they not?

A. To the best of my knowledge, they are.

Q. Is the contract carrier, or carriers, serving your Kansas City and Arlington, Texas, plants controlled by a man who also controls a common carrier engaging in the transportation of automobiles?

A. I understand that is a fact, yes.

Q. Is that Mr. Roy Woods?

A. That is right.

[fol. 450] Q. Does that situation exist at any of your other assembly plants, where the contract carriers serving your company are controlled by persons who also control common carriers engaged in the transportation of the same or a similar type of commodities?

A. I don't know, no.

Mr. Johnson: I would be perfectly happy to stipulate that the parties may refer to the record in that Arlington case.

Mr. Singer: Well, I don't see any necessity for it.

Mr. Frizzell: Then, why are you going into it?

Mr. Singer: I think it's a very pertinent line of cross-examination. I have no knowledge of what was in this Arlington record and therefore wouldn't want to stipulate.

By Mr. Singer:

Q. Is it the policy of your company, the BOP Assembly Division of General Motors, to have, say, your contract carriers on the same basis as described by Mr. Lynch?

A. Yes, I would say so.

I would like to correct one answer, if I may. I said I knew of no other situation where there was a question of common control, which you asked me, and—

Q. In other words, Mr. Roy Woods controls a common carrier and also controls two contract carriers, one serv-

ing your Kansas City assembly plant and another contract carrier serving Arlington, Texas?

A. That is correct. I had forgotten the Arlington.

[fol. 451] Q. I didn't mean to mislead you, but—

A. That is all right.

Q. (Continuing) —but my question was directed to that.

Q. Do you have a carrier other than the contract carrier that serves the assembly plants shown on Exhibit No. 23, with the exception of South Gate, who performs intrastate services for your company; in other words, a second carrier at Wilmington, for example, who would perform some intrastate service?

A. Well, we have a single carrier at all plants who performs both intrastate service and intrastate service.

Mr. Singer: Thank you. That is all the questions I have.

Cross examination.

By Mr. Earp:

Q. Mr. Barrett, I would like to clear up one or two problems here in connection with this warehousing which was referred to earlier, sir. Now, isn't it a fact that on your warehousing at Seattle, Washington, those cars are shipped via rail directly to the Buick Division, the Pontiac Division or the Olds Division of General Motors Corporation, a portion of your cars?

A. I believe that is correct, yes.

Q. Do you know whether or not those divisions are billed by Transport Storage & Distributing Company for their unloading services, their transportation of those cars to their warehouse and for their warehousing?

A. I don't know.

[fol. 452] Q. Do you know whether or not Argonaut Realty Company, which is a subsidiary of General Motors Corporation, in turn, pays Pontiac Division, Buick Division and Oldsmobile Division for the services which have been performed?

A. I don't know that, either.

Q. Do you know how many years Transport Storage & Distributing Company has been serving General Motors



and its subsidiary in performing these services in Seattle, Mr. Barrett?

A. No, sir, I don't know how many years.

Q. Would you agree with me if I said it was more than 25 years?

Mr. Frizzell: Just a minute. I want to interpose an objection, Mr. Examiner. The premise of these questions, of these last two questions, is that there is an arrangement between General Motors and Transport Storage & Distributing Company, and there is nothing in the record to indicate that there is any such arrangement.

Mr. Earp: We will bring that out on direct, Mr. Frizzell.

Mr. Frizzell: Then, I think you must rephrase your question, Mr. Earp.

Mr. Earp: Very well.

By Mr. Earp:

Q. You are acquainted with Transport Storage & Distributing Company, are you not, Mr. Barrett?

A. Some. Not very much, I am afraid.

Q. You may have answered this before, but do you know whether or not they have been serving General Motors [fol. 453] Corporation and its subsidiaries for a longer period of years?

A. I have been told by Mr. Tarte that they have been there for a long time. I don't know actually.

Mr. Frizzell: Can we get the record straight on this, Mr. Examiner?

Exam. Linn: The record may stand as made up to this point.

You may go ahead.

Mr. Earp: Thank you.

By Mr. Earp:

Q. You also ship cars to Alaska, do you not, Mr. Barrett?

A. Not to my knowledge.

Q. Do you know whether or not the Buick Division,



Oldsmobile Division and Pontiac Division ship cars to Alaska?

A. I assume that they do. I am not prepared to say. I haven't seen their records.

Q. Does the traffic department know whether you are processing cars for shipment to Seattle which are then destined to Alaska?

A. Our traffic department?

Q. Yes, your traffic department, under your direction and control.

A. I don't believe that they know that, no.

Q. With respect to this warehousing that is being performed at the present time by the Argonaut Realty Company, have you, in forming this policy which you have enunciated here, have you discussed with them as to [fol. 454] whether or not this warehousing that is being performed will be continued if you initiate direct truck-away movement?

Mr. Frizzell: I object to the question. There has been no showing on this record that Argonaut Realty Company is engaged in any warehousing operation.

Mr. Earp: He stated on cross-examination earlier that Argonaut Realty was a subsidiary of General Motors Corporation and that they were engaged in warehousing.

Mr. Frizzell: I don't think he did.

Exam. Linn: If there is any change in the method of distribution, he may so state.

By Mr. Earp:

Q. Would you answer the question, please?

A. The matter has not been discussed, no.

Q. Do you know whether or not your warehousing program will be continued if you initiate direct truckaway shipments of automobiles, your automobiles?

A. I have no way of knowing that. The warehouses are operated by divisions other than the BOP division and we ship automobiles to the destination points which they furnish us.

Q. Isn't it true, Mr. Barrett, that there are absolutely no

advantages to BOP in shipping automobiles to warehousing via a direct truckaway service?

A. I would say that—

The Witness: Would you read the question, please?

(Last question read.)

[fol. 455] A. No, that is not true.

By Mr. Earp:

Q. What advantages are there, sir?

A. The advantages, so far as we are concerned, are the same advantages that can be afforded to dealers with direct service, and, to repeat, there are delivery of automobiles, better transit time and in better condition.

Q. Why is transit time important to you, when automobiles are going into storage for some period of time? Will you explain that, please?

A. Very often dealers, I understand, order automobiles for delivery to a warehouse, and the time in transit is important to get the car to the warehouse for delivery to the dealer, as well as to a dealer directly.

Q. If the dealer wants the car, then it's not going into the warehouse for storage. I am talking about cars that are going in for storage. Where is time in transit important on those cars?

A. That would be up to the particular division involved. They might want to maintain a smaller stock of cars. I don't know.

Mr. Earp: That is all.

Exam. Linn: Are there any further questions on cross?

(No response.)

Exam. Linn: Redirect?

Mr. Frizzell: Yes.

# Redirect examination.

[fol. 456] By Mr. Frizzell:

Q. Mr. Barrett, in your direct examination you gave the history of your experience and you testified that you used to work at the Pontiac Division plant in Pontiac, Michigan.

A. That is right.

Q. When was that?

A. From 1929 to 1932.

Q. Were the trucking companies named by Mr. Smith in his cross-examination of you there serving that plant at the time you were there?

A. Yes.

Mr. Smith: I object to that question. Going back to 1932 is slightly remote. What the situation was at that time, I don't think, has any bearing as to what the situation is today. I was asking about the situation today, not what it was in 1932.

Exam. Linn: That goes double, Mr. Smith.

You may answer, Mr. Barrett.

Objection overruled.

By Mr. Frizzell:

Q. Will you answer?

Exam. Linn: I believe the answer was in the affirmative.

The Witness: Yes, it was.

By Mr. Frizzell:

Q. When did General Motors start the Buick-Oldsmobile-Pontiac Assembly Division operations?

A. In 1936.

Q. That is when they started assembling automobiles [fol. 457] in assembly plants around the country?

A. That is correct.

Q. When they went into that type of operation, is that when they established—

Mr. Handler (interrupting): This is going to be leading, Mr. Examiner. This is redirect examination.

Mr. Frizzell: All right, I will rephrase it.

By Mr. Frizzell:

Q. And when they went into the assembly plant operation what type of motor carrier service did they adopt as a policy?

A. They adopted the policy of single contract carriers to serve the assembly plants.

Q. Did the corporation undertake to make that policy retroactive?

A. No.

Mr. Frizzell: That is all.

Exam. Linn: Is that all the examination?

Mr. Smith: I have some questions.

Recross-examination.

By Mr. Smith:

Q. Mr. Barrett, if you are retaining these common carriers at the parent plants in Lansing, Flint, Pontiac, Detroit for sentimental reasons, because they are old friends and have served you for years, why aren't you equally sentimental toward the protesting rail carriers in this proceeding? They are old friends who have been serving you [fol. 458] for years, are they not?

A. Yes.

Q. Now answer my question.

Exam. Linn: Well, we have had a day and a half on that already.

Mr. Smith: Not on the reason of why they are using common carriers for sentimental reasons. That just came out a few minutes ago.

Exam. Linn: Are there any further questions? I don't believe—

Mr. Smith (interrupting): May we have an answer to that question?

Exam. Linn: I believe it would be a waste. It has taken us a day and a half to get as far as we are.

Mr. Smith: In other words, you are objection to my question?

Exam. Linn: That is right.

Mr. Handler: Sustained.

Mr. Smith: Thank you. No further questions.

Exam. Linn: You are excused, sir.

[fol. 459] JOSEPH F. SINGERLE was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name for the reporter, Mr. Singerle?

A. Joseph F. Singerle.

Q. What is your business address, sir?

A. 2700 Tweedy Boulevard, South Gate, California.

Q. By whom are you employed?

A. South Gate plant, Buick-Olds-Pontiac Assembly Plant Division, General Motors Corporation.

Q. How long have you been so employed?

A. At South Gate?

Q. Yes.

A. Since September 1, 1955.

Q. Prior to that time what was your job?

A. I started in the Linden Division at Linden, New Jersey, April 16, 1937, as a senior rate clerk. I was promoted to assistant traffic manager and then appointed traffic manager of the Framingham plant, Buick-Olds-Pontiac Assembly Division, January 1, 1946, and I held that position until my transfer to South Gate.

Mr. Frizzell: Mr. Examiner, did we mark these exhibits, 24 and 25?

Exam. Linn: We have not marked any exhibits since the last witness offered certain exhibits.

Mr. Frizzell: This will be No. 24.



Exam. Linn: A document of four sheets entitled, in part, "Distribution of Buick, Oldsmobile and Pontiac Vehicles" will be marked Exhibit 24, and the other one, a 12-page document entitled, in part, "Statement Showing Rail Carrier Service" will be marked Exhibit 25.

(Intervenor's Exhibit Nos. 24 and 25, Witness Singerle, were marked for identification.)

By Mr. Frizzell:

Q. You heard Mr. Barrett's testimony, Mr. Barrett who just preceded you?

A. Yes, sir.

Q. The Linden and Framingham plants indicated on Exhibit No. 23, are those the plants that you worked in before you came to South Gate?

A. Yes, sir.

Q. Mr. Singerle, do you have any production figures with you?

A. Yes, sir.

Q. What did you produce in 1956 at that plant?

A. We produced 132,551 units.

Q. How much of that production went into the state of California?

A. One hundred two thousand nine hundred one.

[fol. 461] Q. And the rest of it went to what states?

A. Arizona, Idaho, Montana, Nevada, Oregon, Utah and Washington.

Q. Of this 102,901 automobiles that went to California destinations, what was the distribution of that traffic as between rail carriers and motor carriers?

A. Sixty-five per cent was truck and thirty-five rail.

Q. When you talk about "truck", what company is it that delivers your production?

A. Pacific Motor Trucking Company.

Q. That is, the applicant here. Mr. Singerle, what is your normal trucking area out of your South Gate plant?

A. Well, we have shipped as far as Paso Robles, which is 240 miles from our plant, via truck.

Q. And do you ordinarily ship that far by truck?

A. Yes, sir.



Q. What is the distance from your South Gate plant to the Arizona border?

A. I would say around 200 miles.

Q. Mr. Singerle, directing your attention to Exhibit No. 24, would you tell us what that exhibit is?

A. This is an exhibit showing the towns in which our dealers are located.

Q. You mean that those are dealers at points involved in this application, is that right?

A. Yes, sir.

[fol. 462] Q. Did you prepare this exhibit?

A. Yes, sir, I did.

Q. Where did you get the population figures?

A. That came out of the Rand-McNally Road Atlas.

Q. And the figures shown at the righthand side of the exhibit, "Period Three Months", what does that mean?

A. That is the exact number of cars that went to each of these towns indicated.

Q. Mr. Singerle, directing your attention to Exhibit No. 25, will you tell us what that exhibit is?

A. It shows the rail service to the dealer towns, showing the destination carrier, the routes used, the number of carriers in order to get a car to that town.

Q. Did you prepare the information that is contained in this exhibit?

A. Yes, sir.

Q. The exhibit is self-explanatory, is it not?

A. Yes, sir.

Q. Directing your attention to the fact shown by the exhibit that 25 points indicated thereon are not served by a rail carrier, dealers located at points not served by a rail carrier are served in what manner?

A. Well, we ship them to the nearest rail point we can.

Q. And then how does the dealer get his car?

A. A dealer goes to that railhead and picks his cars up [fol. 463] and drives them to his place of business.

Q. Is it your intention to eliminate that driving from the railhead to the dealer's place of business?

A. Yes, sir.

Q. Could you pick out one or two points and tell us how far the dealer is from a railhead, just for illustration?

A. Well, Cottonwood, Arizona, we normally ship to Clarkdale, Arizona, which is two miles' distance.

Q. Two miles?

A. Yes, sir.

Chester, Montana, we ship in cars to Shelby, Montana, which is 34 miles distant.

Q. Directing your attention to Exhibit 25, the rail service exhibit, have you with you any illustrations of transit time required by rail carriers from South Gate to a particular point?

A. Yes, sir.

Q. Will you give us the results of your study?

A. Phoenix, Arizona, four days; Boise, Idaho, five; Helena, Montana, eight; Las Vegas, three days; Portland, Oregon, four days.

Q. Is it your business, as traffic manager there, to be informed about transit times?

A. Yes, sir.

Q. Do you or do you not periodically make a check of the transit time by rail carrier?

[fol. 464] A. Yes, we do.

Q. Give us an occasion when you may do that.

A. We make an extensive check at least once a year when we are sampling our dealers with the new models.

Q. Mr. Singerle, what is the fact with respect to split deliveries into the interstate destinations?

A. Well, for the first quarter of 1955 we split approximately 20 per cent, and in three months, June, July, August, in '56 it was approximately 24 per cent.

Q. If you trucked to these dealers at these interstate points, would you still have the problem of split deliveries?

Mr. Jacobson: No.

A. Yes, sir.

By Mr. Frizzell:

Q. Do you think you could handle the split delivery problem more expeditiously by truck than by rail?

A. Yes, sir.

Q. What is the daily production at your South Gate plant?

A. At the present time we are producing just about 750-units per day.

Mr. Bieneman: May I inquire, as a matter of information, is that one or two shifts?

Mr. Frizzell: Two shifts.

The Witness: Two shifts.

By Mr. Frizzell:

Q. Mr. Singerle, Exhibit No. 12 introduced by Mr. Booth, have you examined that exhibit?

[fol. 465] A. Yes, sir.

Q. Is that a correct portrayal of your plant area?

A. Yes, sir.

Q. And likewise Exhibits 13 and 14, which are aerial photographs, is that a correct portrayal of your plant area?

A. Yes, sir.

Q. Mr. Singerle, what is the storage capacity for new automobiles at your South Gate plant?

A. We have approximately 800 stalls assigned to the traffic department for new cars, okayed cars.

Q. That is roughly one day's production, is it not?

A. Yes, sir.

Q. Do you know what the storage capacity is of the Pacific Motor Trucking Company terminal?

A. They have about 430 to 450 spots in their yard.

Q. Then, it is important that you have a constant and even flow of your production through the storage yard and through the terminal of your carrier?

A. Yes, sir.

Q. Does PMT give you that type of service?

A. Yes, sir.

Q. Mr. Singerle, you have been in the hearing room all during the course of the hearing, have you?

A. Yes, sir.

Q. Have you not?

[fol. 466] A. Yes, sir.

Q. And you have heard testimony to the effect, by Mr. Booth, to the effect that Pacific Motor Trucking Company has not only a contract carrier operation whereby it delivers new automobiles, but that it also has a so-called

common carrier operation for the delivery of merchandise or dry freight, you have heard that testimony?

A. Yes, sir.

Q. Do you use the services of the common carrier phase of the Pacific Motor Trucking Company?

A. No, sir.

Mr. Bieneman: Mr. Frizzell, may I inquire, could we interpret that answer to mean it doesn't matter who routes it, they don't haul in or out of that plant?

The Witness: That is right.

By Mr. Frizzell:

Q. They don't come in or out of your plant?

A. That is right.

Mr. Frizzell: Does that satisfy you?

Mr. Bieneman: Yes. I was just wondering if the answer was restricted to traffic that he routed.

Mr. Frizzell: Mr. Examiner, I offer the two exhibits, 24 and 25.

Mr. Cronon: Would you please defer ruling until after the cross, Mr. Examiner?

Exam. Linn: Very well. The witness is available for [fol. 467] cross-examination.

Cross examination.

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[fol. 468]

By Mr. Burchell:

Q. As a matter of fact, there are a number of points shown on Exhibit 24 which are indicated as not being dealership points, aren't there?

A. That could be true.

Q. You mentioned that your normal area, or that the furthestest that you had trucked automobiles out of South Gate was to Paso Robles, about 240 miles?

A. I say, we have trucked automobiles that far, yes, sir.

Q. That was my question. Do you normally truck automobiles that far?

A. Yes, sir.

• • • • •

[fol. 469]

Cross examination.

By Mr. Handler:

Q. You have previously stated in your testimony that PMT does not deliver to or take products from your South Gate plant. Is that correct? Or did I misunderstand you?

A. No; I am misunderstanding you.

Q. Let me ask the direct question. Does Pacific Motor Trucking Company render any service to you other than the transportation of the automobiles outbound?

A. No, sir.

Q. Is that as a result of some policy you have established?

A. No, sir.

[fol. 470]

Recross examination.

By Mr. Jacobson:

Q. This exhibit shows the movement of cars for the first three months in 1955. How old is that population figure, what census was it taken from, what year?

A. We took a Rand-McNally Road Atlas for 1956.

Mr. Farrell: I have a question or two.

Recross examination.

By Mr. Farrell:

Q. Are you shipping cars by rail to destinations within the state of California where there is an interline movement, more than one railroad handling it, where PMT presently has authority and could serve it by highway under their existing certificates?

A. I couldn't say.

Q. Don't you ship to points on the Santa Fe in California by rail?

A. Offhand I couldn't tell you.

Mr. Farrell: That is all.

[fol. 471] Mr. Frizzell: I will again, Mr. Examiner, offer Exhibits 24 and 25.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 24 and 25, respectively, Witness Singerle, were received in evidence.)

(Witness excused.)

Mr. Frizzell: We will call Mr. Cron.

GEORGE D. CRON was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you give your name to the reporter, please?

A. George D. Cron.

Q. What is your business address?

A. Sixty-ninth and Foothill Boulevard, Oakland, California.

Q. What is your occupation?

A. Traffic manager.

Q. Of what?

A. Of Chevrolet-Oakland Division of General Motors Corporation.

Q. How long have you been traffic manager of that plant?

A. I have been with the corporation, Chevrolet Division, for 34 years and I have been traffic manager since 1926.

Q. Has all of your service been at the Oakland plant?

A. It has.

Q. When did that plant first open?

[fol. 472] A. 1916.

Q. Mr. Cron, have you been in the hearing room throughout the proceeding?

A. I have.

Q. Did you hear the testimony of Mr. W. R. Lynch?

A. I have.

Q. Is Mr. Lynch the gentleman to whom you report in matters of traffic?

A. He is.



Q. You are the George Cron that he referred to in his testimony?

A. Correct.

Q. Mr. Cron, do you have any production figures for your plant?

A. I have.

Q. Will you give them to us, please?

A. I will give you 1955 figures, inasmuch as I can break them down, if necessary. We produced at Oakland 125,516 units in 1955.

Q. Do you have any figures for 1956?

A. We produced in 1956 129,632.

Q. Now tell us this: Are those units that were produced trucks and passenger cars?

A. Yes, sir.

Q. And in what percentages, can you tell us?

A. A quarter of the total figures that I gave are truck production.

[fol. 473] Q. Are they all Chevrolet automobiles or Chevrolet trucks?

A. They are.

Q. What part of that production, Mr. Cron, would be delivered in the state of California and what part of it would be delivered to the normal shipping area of your plant, meaning states other than California in the western part of the country?

A. I can give you the breakdown of the states other than California: Oregon, in 1955 we shipped 24,254 units. Washington, 24,920 units. Idaho, 4,671 units. Nevada, 1,509. And Utah, 1,546. The balance of the production was distributed in California.

Q. Directing your attention just to California, what is your distribution as between rail deliveries and truck deliveries?

A. I believe Mr. Lynch testified it was 46 per cent rail and 54 per cent truck.

Q. And now directing your attention to the deliveries in the other states that you mentioned, except the state of Nevada, how are your deliveries made to those states?

A. Rail.

Q. And to points in the state of Nevada, how are deliveries made in that state?

A. Truck.

Q. You have mentioned you have deliveries by truck out of your plant at Oakland. What truck line is it that serves you?

A. Pacific Motor Trucking.

[fol. 474] Q. Mr. Cron, will you refer to the exhibit marked No. 26.

(Intervenor's Exhibit No. 26, Witness Cron, was marked for identification.)

By Mr. Frizzell:

Q. Was that exhibit compiled by you?

A. It was.

Q. The list of points, could you tell us what those points represent?

A. Those points represent dealer locations where we ship automobiles direct to dealers.

Q. Would they represent any points to which deliveries are made to a dealer who is not at that point?

A. I would say not.

Q. The population figures shown on that exhibit were taken from what source?

A. From Rand-McNally Atlas and the Commercial Marketing Guide of 1956.

Q. And the column marked "1955" indicates what?

A. The units shipped to those points.

Q. And that would be both truck and passenger cars?

A. Correct.

Q. What is the column headed "Six Months Ended June 30, 1956"?

A. The units delivered for the first six months of 1956.

Q. And that would be passenger cars and trucks also?

A. Yes, sir.

Q. Mr. Cron, would it be a correct statement that the [fol. 475] ratio of passenger cars to trucks would be the same as you have already testified about?

A. It would. It usually averages about three passenger cars to one truck.

Q. Directing your attention, Mr. Cron, to Exhibit No. 27—

(Intervenor's Exhibit No. 27, Witness Cron, was marked for identification.)

By Mr. Frizzell:

Q. (continuing) —is the information contained in Exhibit No. 27 compiled by you?

A. Yes, sir. The information put in this statement, or exhibit, was furnished by me and furnished to you to put in exhibit form.

Q. Mr. Cron, you indicate in that exhibit that a number of dealer points are not served by a rail carrier. Could you give us an illustration of a point that is not served by a rail carrier, and how a dealer would get his motor vehicles there?

A. In the points which we ship to out of Oakland, our Oakland area shipping, we have 49 points which are off-line points. The worst one we have is a town by the name of Gold Beach, Oregon, which must be shipped to Coquille, Oregon, and the distance—for the reason that Gold Beach has no railhead, and the distance between Coquille and Gold Beach is 77 miles.

We have other points, such as Point DeLake, Oregon, where we ship to Toledo 36 miles away.

And Mitchell, Oregon, where we ship to Prineville, a distance of 48 miles away.

[fol. 476] Q. Does the dealer take delivery at the railhead?

A. At the railhead.

Q. Mr. Cron, did you make any study of transit time and did you pick out some representative points in connection with that study?

A. Yes. Our transit time, which we check at the first of each model year to dealers, we make a thorough check of transit time to rail transportation points and a check is made against each shipment as it's forwarded from our plant to see that it arrives on the date prior to the dealer showing. These show anywheres, like Seattle, for instance, third to fourth morning delivery, Spokane will average

fourth morning, sometimes fifth morning, Boise, Idaho, will average, will figure, four, five and sometimes, due to terminal delays between the Southern Pacific and the Union Pacific, it may run six. Those are rare occasions.

Q. How long has Pacific Motor Trucking Company been serving your plant?

A. Since 1935.

Q. Has the service been satisfactory to you?

A. Very satisfactory.

Q. What railroad supplies you with boxcars for the transportation of your new automobiles?

A. Southern Pacific Company.

Q. Could you tell us, of the cars furnished by them, who [fol. 477] owns the cars?

A. Southern Pacific Company.

Q. Have you ever experienced any car shortages at your plant?

A. Yes, we have.

Q. Could you tell us about one of those car shortages?

A. Well, we had a car shortage the first part of 1955. It became quite serious, it was necessary to change our production schedules, diverting the production to local delivery cars via PMT truck service rather than rail points, in order to alleviate car shortages. We also at that time, and I do not have a record of it here, but we moved some three hundred cars by water up to the Pacific Northwest, Portland and Seattle.

Mr. Cronon: Through no fault of the witness, I didn't hear that answer. May we have it read, please?

(Last question and answer read.)

By Mr. Frizzell:

Q. What is the fact in connection with water transportation, in point of time?

A. It's longer.

Q. Mr. Cron, Mr. Booth, in his testimony, introduced into the record his Exhibit No. 4, which purports to be an outline of your plant facilities at Oakland, your Plant No. 1. Is that a correct portrayal of your plant?

A. That is correct.

Q. Mr. Cron, what is your daily production at your Plant No. 1?

A. Four hundred seventy-seven units.

[fol. 478] Q. What is your storage capacity?

A. Four hundred eighty.

Q. What is the storage capacity of the PMT terminal at your plant?

A. I believe it's around 375 units.

Q. Is it important that you have a constant flow of motor vehicles out of your plant and out of the carrier's terminal every day?

A. It is.

Q. Mr. Cron, do you use Pacific Motor Trucking Company exclusively for your automobile and truck deliveries?

A. Yes, sir.

Q. I am talking to you now about Chevrolet.

A. That is correct.

Q. Is there ever an occasion when you would release any automobiles or trucks to a transportation company, a motor transportation company, other than Pacific Motor Trucking Company?

A. May I have that question clarified to the extent, do you mean Chevrolet trucks and Chevrolet passenger cars on which we pay the freight?

Q. Let me start all over again, Mr. Cron. You testified that you used PMT exclusively for the delivery of Chevrolet traffic.

A. That is right.

Q. Now I am asking you, is there ever an occasion when you would release automobiles or trucks to any other carrier besides Pacific Motor Trucking Company?

A. Yes.

Q. Tell us what those occasions would be.

A. Those occasions are caused by government production, where the government issues the bills of lading instructing the carrier to whom they should be delivered.

Q. Do you have anything to do with that traffic?

A. No, I do not.

Q. Who pays the freight?

A. The government.



Q. Referring to Mr. Booth's Exhibit No. 4, what is the volume of that traffic, Mr. Cron?

A. For the first, from the 1st of January 1957—that is the only records I could get, inasmuch as we do not have a copy of the government bill of lading to check them out—we had 207 units moved by the Insured Transporters, Inc., and by Kenosha, to date, 26 units.

Mr. Smith: You mean, by "Kenosha", Kenosha Auto Transport Corporation?

The Witness: I guess that is the name.

Mr. Vaughan: What was that figure for Insured Transporters?

The Witness: Two hundred seven.

By Mr. Frizzell:

Q. And did you give the figure for KAT?

A. Twenty-six.

Q. Will you refer to Exhibit No. 4, Mr. Cron, and point [fol. 480] out on that the location at which these automobiles or trucks were released to these other motor carriers?

A. Looking, taking it with the tracks, the whole yard, at the bottom, towards the top where you see the administration building, you will note before you come to the administration building there is a gate, and right in between that gate and a guardhouse, where it says "Guard", is a little triangular square which we use normally for cars that we have for repair, but we handle the Army jobs through that congested area and they are delivered out of that point.

Q. Mr. Cron, Mr. Booth also put in Exhibits 5 and 6, being aerial photographs. Do you recognize those photographs?

A. I do.

Q. What do they portray?

A. They portray our Plant No. 1.

Q. Mr. Cron, do you ship any cars from your Plant No. 1 to interstate or foreign destinations through the local ports?

A. Yes, we do.



Q. Is that a regular operation?

A. Yes, it is.

Q. And who handles it?

A. PMT.

Q. Do you have occasion, Mr. Cron, to ship parts and accessories, automobile parts and accessories?

A. Yes, I do.

[fol. 481] Q. Where would such shipments go to?

A. They would go to dealers within the state of California and interstate.

Q. Do you have established routings for the handling of that type of traffic?

A. I have.

Q. Will you tell us whether or not the Pacific Motor Trucking Company, a common carrier by motor vehicle, is included in any of your routings?

A. They are included to a few points in California only. No interstate traffic is given to PMT.

Q. Well, they are included on a few intrastate points to California. Could you give us any idea about the volume of products that they handle?

A. Yes. In 1955 the total revenue was some 8 thousand and some odd dollars, and the reason for that is, and why it was so high, was that we used PMT on holidays when other truck lines, common carriers, will not come into our plant due to the overtime basis, and PMT has agreed to come in and pick up the freight for those other truck lines. That is the time we used them.

Mr. Jacobson: Could I have that read, please?

(Last question and answer read.)

Mr. Frizzell: I offer Exhibits, Mr. Examiner, 26 and 27.

Exam. Linn: The documents referred to in the testimony, Exhibits 26 and 27, are received in evidence.

[fol. 482] (Intervenor's Exhibits Nos. 26 and 27, respectively, Witness Cron, were received in evidence.)

Mr. Bieneman: Mr. Examiner, might this be an appropriate time for a recess?

Exam. Linn: We will be at ease briefly.

(Short recess.)

Exam. Linn: The hearing will be in order.

Cross examination.

By Mr. Cronon:

Q. Referring to your Exhibit 26—

Mr. Frizzell: Mr. Examiner, I had one other question I wanted to cover.

Exam. Linn: Go ahead.

Further direct examination.

By Mr. Frizzell:

Q. Mr. Cron, I overlooked, and I think it should come out on direct examination, what is the extent of your deliveries by PMT in northern California?

A. We use PMT from the Coast to the entire northern part of California, to the northern border of California, to the east.

Q. And how far south do you go?

A. As far as Fresno and a little bit below Fresno.

Q. How far is that, in distance?

A. I would say, up to the Oregon border it must be some 225 miles. I am not sure. I am just guessing at it.

Q. Fresno?

A. Fresno is about 190 miles.

[fol. 483] Q. How far is it to the Nevada border?

A. The Nevada border is about 147 or 150 miles.

Mr. Frizzell: Thank you.

Mr. Myers: Before the cross-examination starts, may I speak for a moment, Mr. Examiner?

Exam. Linn: Does it relate to this particular case in hearing or to your own case?

Mr. Myers: To our own case. Since all the parties here are parties, since all the parties in Cassen's case are parties to this case—

Mr. Frizzell: That is not so, Mr. Examiner. I am not a party to the Cassen's case.

Mr. Myers: I said all the parties in the Cassen's case are present—

Exam. Linn: Do you want to make a record in your own case or in this case?

Mr. Myers: I just simply want to make an announcement at this time, if I may. We have heard most of the applicant's case so far on direct and we have elected not to proceed with our application in the Cassen's case. I just want the parties to know that. If any further application is necessary, we will take care of that. We are asking leave to withdraw our application in the Cassen's case.

Exam. Linn: Off the record.

(Discussion off the record.)

[fol. 484] Exam. Linn: On the record.

Cross examination (continuing).

By Mr. Cronon:

Q. Mr. Cron, referring to your Exhibit 26, I asked Mr. Singerle on a similar exhibit whether or not he made any personal survey of these towns and he indicated he did not. Is that true in your case?

A. No.

Q. That is true, isn't it?

A. It's true, I made a survey of this.

Q. Oh, you did?

A. I made up this report. This is taken right from our actual records, shipping records.

Q. But as to the towns, whether or not they are postal stations or located on star routes or how many business places are there, you made no personal survey of each town?

A. No, I didn't personally go to those towns, no.

Q. I notice that your Exhibit 27, starting with page 6—well, it is page 6 only—that covers what you call rail service to Nevada points, seven points not served by rail, is that correct?

A. That is correct.

Q. And the balance are served by rail, but your Exhibit 26 indicates no shipments into Nevada?

A. Because the only one, only one point, I think, Ely, Nevada, is the only point which we do not truck to, as far as our shipping area is concerned. You see, Ely, Nevada, [fol. 485] is out of our area, of the Oakland plant. And we already have rights to the Nevada points, we are trucking to those points.

Q. When you say "we already have rights", is that—

A. Well, PMT, I should say, PMT has rights to there, and our territory goes as far as Elko, Nevada.

Q. What I am curious about, maybe I don't understand this, if you have rail and PMT service into Nevada, the reason for your not having shipped any cars into that state outside of Ely, you do have service into other points in Nevada, do you not?

A. Well, we have truck service, yes.

Q. But do I understand that all deliveries into Nevada are made from a distribution point other than Oakland?

A. Some of them.

Q. Some shipments are made into Nevada from your Oakland plant?

A. Yes.

Q. But in the period covered by your exhibit, Ely is the only point to which shipments are made, is that correct?

A. By rail.

Q. By rail?

A. Yes.

Q. You don't show anything by truck, then—

A. (Interrupting) As far as Oakland. Now, Ely primarily is a Van Nuys point. We have shipped some shipments into Ely, Nevada.

Q. Well, this Exhibit 26, is that designed to cover only rail shipments?

[fol. 486] A. Rail shipments.

Q. I see.

Mr. Bieneman: Could we make that formal change in the exhibit, to insert after the word "Vehicles" "By Rail"?

Exam. Linn: We will read the exhibit in conjunction with the testimony.

Mr. Cronon: May I ask Mr. Frizzell a question?

Exam. Linn: Yes.

Mr. Cronon: Is the same explanation true with respect to Exhibit 24? Those are rail shipments only?

Mr. Frizzell: Yes, sir, they are all rail shipments.

Mr. Cronon: I have no further questions.

Cross examination.

By Mr. Burchell:

Q. The only dealerships under the Oakland plant in Idaho are the points shown on Exhibit 26?

A. That is correct.

Q. Other dealerships in Idaho are served from Kansas City or Van Nuys?

A. That is right.

Q. If this application is granted, will there be any more business move from the Oakland plant to Idaho dealerships than there is at present?

A. I think Mr. Lynch answered that question. In fact, that is one of policy that will have to emanate from Mr. Lynch in Detroit.

[fol. 487] Q. You don't know?

A. I don't know.

Mr. Burchell: That is all.

Cross examination.

By Mr. Farrell:

Q. On your Exhibit 27 you show 11 points in Washington as not being served by rail.

A. Yes, sir.

Q. Have the dealers at any one of those points requested that you ship your automobiles by highway to them?

A. I have had requests received through our sales division—

Q. From how many of those 11 points?

A. I wouldn't know.

Q. And you are shipping automobiles within California on two-line rail movement at the present time, are you?

A. No, sir.

Q. You stated that approximately 46 per cent of your production within California is being shipped by rail?

A. I didn't say that. I said 46 per cent of our production was shipped by rail and 54 per cent by truck, the truck part being Nevada and California, the rail would be out of state.

Q. You are trucking all of your production—

A. In other words, there is no rail in California.

Mr. Farrell: Thank you.

### Cross examination.

By Mr. Andersen:

Q. Your Exhibit No. 26, is that a complete record of rail [fol. 488] shipments from Oakland to the points you mention during the last half of 1956?

A. That is the number of units shipped to those dealers.

Q. Wouldn't this exhibit purport to include a record of any shipments made to a military establishment?

A. No.

Q. In regard to your Exhibit No. 27, have you had any complaint from any of the places mentioned in Utah of inadequate service?

A. Utah is out of our shipping area and out of our Pacific Coast region and we would not receive complaints from there.

Q. Although you do make shipments into the state?

A. Very few.

[fol. 489] Cross examination.

By Mr. Handler:

Q. It does not. Now, I understood you to say that Insured Transporters moved some vehicles on government bills of lading.

A. They have.



Q. Those vehicles would be additional to anything shown on Exhibit 26?

A. Yes, sir.

Q. Did Insured Transporters transport any vehicles from your Oakland plant that were not moving on government bills of lading?

A. What have you reference to?

Q. Anything. Any automobile or truck moving from the Oakland plant.

A. They have moved GMC trucks.

Q. And do they do that regularly?

A. They do.

Q. And is that out of the same plant?

A. No, that is out of our truck plant.

Q. And that truck plant is the No. 2 plant?

A. Correct.

Q. Also in Oakland?

A. That is right.

Q. Now, then, you are not supporting this application [fol. 490] for any authority out of that plant, are you, the GMC plant?

A. No.

Q. You are requesting the Commission here, then, your support is only for movements out of Plant No. 1?

A. That is correct.

Q. As to the traffic which Insured transported on government bills of lading, did that move out of Plant No. 1?

A. Some of it out of Plant 1 and some of it out of Plant 2.

[fol. 491] Mr. Frizzell: Mr. Lilinthall, please.

T. R. LILINTHALL was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name to the reporter?

A. T. R. Lilinthall.

Q. Your address, your business address?

A. 8000 Van Nuys Boulevard, Van Nuys, California.

Q. By whom are you employed?

[fol. 492] A. Chevrolet-Los Angeles Division, General Motors Corporation.

Q. How long have you been employed?

A. I have been with the company 34 years, 10 years with Chevrolet-Los Angeles, six years with Chevrolet-Buffalo as traffic manager, six years at Bloomfield, New Jersey, as traffic manager, assistant traffic manager at Tarrytown prior to that.

Q. Are you the first traffic manager at the Raymer plant?

A. Yes, sir.

Q. You came there when the plant opened, is that right?

A. I came there when it was under construction. It opened in 1948, with the 1948 model.

Q. Mr. Lilinthall, are you the Lilinthall that Mr. Lynch referred to in his testimony?

A. Yes, I am.

Q. You have heard Mr. Lynch's testimony?

A. Yes.

Q. Is Mr. Lynch the gentleman that you report to?

A. Yes, sir.

Q. Mr. Lilinthall, I show you what has been marked Exhibit No. 28 and ask if that is a statement of shipments from your Raymer plant to the points indicated therein.

A. Yes, it is.

Q. The points that are named in this exhibit, are they dealer points?

[fol. 493] A. Dealer points.

Q. And the population figures, where did you get that?

A. Rand-McNally maps, atlas.

Q. And the last two columns on the far right are actual shipments?

A. That is right.

Q. I mean actual automobile shipments?

A. Actual automobile shipments.

Q. You understand that Exhibit 28 lists only points that are involved in this application, do you not?

A. That is right.

Q. Directing your attention to Exhibit No. 29, Mr. Lilin-

thall, was that exhibit prepared under your direction and supervision?

A. Yes, it was.

Q. And the exhibit is self-explanatory, is it not?

A. That is right.

Q. Directing your attention to the recapitulation in which there is indicated 49 points, dealer points, not served by a rail carrier, did you, for the purpose of this hearing, select any of those point for discussion as to how the dealer at that point gets his automobiles?

A. Yes.

Q. Will you give us the benefit of that?

A. We ship a load to Casa Grande, Arizona, with the unit to the dealer at Coolidge, which is 25 miles from Casa [fol. 494] Grande. That dealer has to come from Coolidge to Casa Grande, unload his car, and drive back to his dealership.

Q. Do you have any other point?

A. Yes, we have. We have, at Soda Springs, Idaho, we put a car, two cars, in there for Grace, Idaho, which is 11 miles from Soda Springs, and the dealer there has to do the same thing, travel 11 miles, unload his car and drive back with his unit.

Q. Is that illustrative of the other points that are not served by rail carrier?

A. That is right.

Mr. Frizzell: Are you getting it?

Mr. Burchell: I am hearing it, but I don't understand it.

Mr. Frizzell: Would you tell me whether you don't understand my questions or you don't understand the answers?

Mr. Burchell: He was testifying with respect to a shipment to Grace, Idaho, and you were referring to it as not being covered by railroad. Is that the tenor of his testimony?

The Witness: These are split shipments. — Wait a minute. I got off the track here. We were talking about railheads.

By Mr. Frizzell:

Q. Points not at or being served by railroad, where the dealer gets it at a railhead.

A. We will take St. George, Utah, on which delivery is made at Cedar City, which is 60 miles from St. George. So again, as I said before, the dealer has to drive from Cedar City, unload his units and drive back to his dealership, which is at St. George.

[fol. 495] Also St. Johns, Arizona, takes delivery at Holbrook, which is 60 miles away from St. Johns.

Mr. Frizzell: Is that clear now?

Mr. Burchell: Yes, sir. You did not mean to leave any inference that Grace, Idaho, or Coolidge, Arizona, were not served by railroad, is that correct?

The Witness: No, that is right. Those are mixed loads.

Mr. Burchell: Very well.

By Mr. Frizzell:

Q. Do you have some illustrations from this Exhibit No. 29 in respect to transit time, Mr. Lilinthall?

A. Yes, I do.

Q. Give us those, please.

A. Salt Lake City, Utah, is four to five days rail; Las Vegas three to four days; Flagstaff, Arizona, is four, sometimes four to six days.

Q. Do you have occasion to check the transit time of the railroads?

A. Yes, we do.

Q. Did you hear Mr. Cron's testimony on that point?

A. Yes, I did.

Q. Would yours be the same?

A. The same.

Q. Do you have any production figures with you, Mr. Lilinthall?

A. I do.

[fol. 496] Q. Do you have any production figures for 1956?

A. The first six months of 1956.

Q. What was that?

A. Seventy-one thousand eight hundred seventy-six. That is both passenger and commercial vehicles.

Q. And as to passenger cars and commercial motor vehicles, what is the ratio one to the other?

A. Between passengers and—?

Q. Yes.

A. About, well, I would say it's about seventy-five and twenty-five.

Q. Seventy-five what?

A. Passenger cars, and 25 per cent commercial motor vehicles.

Q. When you ship your motor vehicles, do you ship them on that same ratio?

A. Commercial vehicles?

Q. When you make shipments of your motor vehicles that you produce, do you ship them in just about the same ratio, that is, one truck to three passenger cars?

A. Yes, that is right.

Q. Directing your attention to the year 1955, do you have production figures for that year?

A. Yes; we produced 122,649 units in 1955.

Q. And the ratio as to that, between trucks and passenger cars, would be about the same?

[fol. 497] A. Would be about the same.

Q. Of the production at your plant, about how much of it is for California points?

A. About 23 per cent, or I should say 77 per cent.

Q. And the rest of it goes where?

A. Twenty-three percent rail.

Q. Just a minute, now. Seventy-seven per cent goes to California points?

A. That is right.

Q. And the rest of it goes to interstate points?

A. That is right.

Q. So all of your California deliveries, then, are by motor carrier, is that right?

A. That is right.

Q. And the 23 per cent which goes by rail goes to what states?

A. It goes to Arizona, Nevada, Utah.

Q. Do you ever have occasion to ship to other states besides those three that you named?

A. Idaho is included in there. I didn't say Idaho. Arizona, Nevada, Utah and Idaho. Idaho is included.

Q. Mr. Lilinthal, what motor carrier do you use for the delivery of your outbound shipments?



A. Pacific Motor Trucking Company.

Q. How long have you used that motor carrier?

A. Ever since the plant has been in operation.

[fol. 498] Q. Has its service been satisfactory or not?

A. Yes, it has.

Q. About how far, Mr. Lilinthal, is your trucking area from your plant?

A. About 240 miles.

Q. How far is your plant from the Arizona boundary?

A. About 200 miles.

Q. Mr. Lilinthal, of your deliveries to these out-of-state points, could you tell us what percentage are split deliveries, so to speak?

A. About 46 per cent.

Q. And they are all rail?

A. That is right.

Q. And would that percentage be maintained if you were delivering by truck?

A. Yes, it could.

Q. But would motor carrier deliveries be more efficient and expeditious in handling split deliveries?

A. Oh, yes. It would put the shipment right in the dealer's hands and the dealer wouldn't have to do any traveling to pick up his units.

Q. Do you know that Pacific Motor Trucking Company has a common carrier operation, or do you?

A. Yes, I do.

Q. Do you ever use the common carrier operation of Pacific Motor Trucking Company?

[fol. 499] A. No, not in interstate.

Q. Interstate?

A. Not in interstate; intrastate.

Q. How about intrastate?

A. Intrastate, we do use them to a certain extent.

Q. Regularly?

A. Yes, regularly.

Q. How much revenue do you pay them?

A. That I don't know. I don't have that figure.

Mr. Frizzell: That is all.



## OFFERS IN EVIDENCE

I offer Exhibits 28 and 29, Mr. Examiner.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 28 and 29, respectively, Witness Lilinthal, were received in evidence.)

. . . . .

[fol. 500] OLIVER E. ETZEL was sworn and testified as follows:

• Direct examination.

By Mr. Meinhold:

Q. Will you please state your name and business address?

A. My name is Oliver E. Etzel, my business address is 110 Market Street, San Francisco, California.

Q. What is your occupation?

A. I am employed by Pacific Motor Trucking Company as executive assistant in the office of its vice-president.

Q. How long have you been employed by Pacific Motor Truck Company?

A. I have been employed by Pacific Motor Trucking Company since it was incorporated in 1933.

Q. Are you familiar with the common carrier and contract carrier operating rights of Pacific Motor Trucking Company?

A. Yes, I am.

Q. Does Pacific Motor Trucking Company hold certificate right of public convenience and necessity issued by the Interstate Commerce Commission?

[fol. 501] A. Yes, it does.

Q. And it also holds permits issued by the Interstate Commerce Commission?

A. Yes, it does.

Q. Have you prepared an exhibit setting forth the common carrier certificates of Pacific Motor Trucking Company?

A. Yes, I have prepared such an exhibit, which is entitled "Complete Authority Heretofore Issued to Pacific Motor Trucking Company by the Interstate Commerce Commission Authorizing Transportation of Property as a Common Carrier by Motor Vehicle".

Exam. Linn: The document will be marked Exhibit 30. (Applicant's Exhibit No. 30, Witness Etzel, was marked for identification.)

By Mr. Mainhold:

Q. Is Pacific Motor Trucking Company presently conducting operations pursuant to the operating authority described in Exhibit No. 30?

A. Yes, it is.

Q. Are you familiar with the application that is pending before the Commission in this proceeding?

A. I am.

Q. Will a contract carrier operation, as proposed in the application, duplicate in any manner as to territory or commodities the operating authority set forth in your Exhibit No. 30?

A. The proposed contract carrier operations do not duplicate any of the authorities, authorized common carrier [fol. 502] operations as between points of service, except to certain territory in western Oregon. A combination of items 1, 2, 5, 5-A, 7, 10, 12 and 13 of Pacific Motor Trucking Company's certificate of public convenience and necessity, Docket No. MC-78786, dated July 27, 1956, would permit Pacific Motor Trucking Company to transport, as a highway common carrier, automobiles between points in the San Francisco Bay area, including Oakland, to points on authorized routes in western Oregon. To the extent that service is authorized to off-rail locations in Oregon, there is a duplication of offer of service as a common and contract carrier.

Q. What points specifically would be involved in such duplication?

A. What I have in mind is this: The present authority authorizes service to all points on the authorized routes

which are stations on the rail lines of Southern Pacific Company, including points on the authorized routes that are not more than 10 miles by highway from such a rail station on an authorized route, and to the extent that service to these highway points is authorized in the common carrier certificate, a duplication would exist in the event the contract carrier authority sought is granted to serve all points in Oregon which are not stations on the lines of Southern Pacific Company.

Q. Can you tell us what point or points would be so involved in the duplication of service?

[fol. 503] A. Yes. Of Oregon points to which Chevrolet Division, General Motors Corporation, ships cars, there is only one point at which a duplication of service would result. That point is Toledo, Oregon.

Q. Do you know what the population of Toledo is?

A. (No response.)

Q. If you don't have it—

A. No, I don't apparently. I apparently don't have it with me.

Q. I will withdraw the question, to save time.

With respect to service from the California origins to points in the other states involved in the pending application, will there be any duplication of service as between common carrier and contract carrier operations?

A. No, there will be none.

Exam. Linn: You are speaking of duplication of service or duplication of operating rights?

Mr. Meinhold: Duplication of operating rights.

Exam. Linn: Is that the sense in which you are answering the questions?

The Witness: Would you read Mr. Meinhold's question back to me again, please?

(Last question and answer read.)

The Witness: That is right.

By Mr. Meinhold:

Q. I believe you stated that the point involved in Oregon was Toledo. Isn't it a fact that the point would be Newport?

[fol. 504] A. That is right.

Q. Newport, Oregon?

A. Newport, Oregon, being a point approximately four miles west of Toledo, four to six miles.

Q. Referring to common carrier operating rights, you are referring to those rights under which Pacific Motor Trucking Company may provide service to the public, are you not?

A. Yes.

Q. When was the operating right between the San Francisco Bay area and Portland acquired by Pacific Motor Trucking Company?

A. July the 1st, 1940.

Q. Are there any restrictions in the commodity authorization in that operating right?

A. Yes.

Q. Where are they?

Mr. Handler: Pardon me, Mr. Meinhold. Can you refer us in Exhibit 30 to the certificate that embraces that authority?

Mr. Meinhold: Will you do that, Mr. Etzel?

The Witness: As I already testified, that authority is contained in Certificate 78786, dated July 27, 1956, and is a document consisting of 54 sheets attached immediately under the title page. The items of the certificate which we are discussing are items 1, 2, 5, 5-A, 7, 10, 12 and 13.

[fol. 505] By Mr. Meinhold:

Q. I believe you were about to state the commodity restrictions in the present operating right, were you not?

A. These operating rights—

Exam. Linn: I wonder if we can't just read the exhibit. If someone attempts to construe that document with other than a very short pencil, we are liable to just misconstrue the transcript.

By Mr. Meinhold:

Q. Perhaps if I could ask one leading question of you. Mr. Etzel: Does not that commodity authority contain a

restriction prohibiting the transportation of commodities requiring special equipment?

A. It does.

Q Have you requested from the Interstate Commerce Commission an informal opinion as to whether automobiles may be transported from Oakland to Oregon points, in view of that restriction?

A. Yes, we have. Such an informal request has been made on the Interstate Commerce Commission for determination of the question and we were advised by the Director of the Bureau of Motor Carriers that it—

Mr. Handler (interrupting): I object to that on the ground it's hearsay. If there is any written advice, I suggest it be submitted in evidence as the best evidence.

By Mr. Meinhold:

Q. Do you have the document containing the advice with you?

[fol:506] A. I will see. I do.

Q. Have you found the advice from the Commission?

A. Yes.

Q. In what form is that advice?

A. It's in the form of a Western Union telegram addressed to Pacific Motor Trucking Company.

Mr. Johnson: It's short.

Mr. Meinhold: Would you like to look at it?

Mr. Handler: Yes. Thank you.

By Mr. Meinhold:

Q. What is the date of the telegram?

A. March 14, 1955.

Q. By whom is it signed?

A. It is signed "W. J. Blanning, Director".

Q. And to whom is it addressed?

A. To S. E. Hyde, Pacific Motor Trucking Company.

Q. And will you read the telegram, please?

A. "Rephone. It is informal opinion of Commission, Division 5, that carrier is not authorized in Certificate MC-78786 to use special automobile equipment for transporta-

tion of automobiles. Refer O. Signed: W. Y. Blanning, Director."

Q. In the event the Commission should not agree with the informal opinion of Mr. Blanning, is Pacific Motor Truck Company willing that its common carrier authority from the San Francisco Bay region to Oregon points may be modified in any manner so as to prevent the transportation of new automobiles in initial movements from Oakland to [fol. 507] points in Oregon authorized to be served by this operating right?

A. Yes. Pacific Motor Trucking Company is agreeable to accepting a further condition in its operating rights between ~~Oakland~~ and Oregon points to exclude therefrom the right to transport assembled automobiles, trucks and buses.

Q. Have you been authorized to make that statement, Mr. Etzel, by your superior officers?

A. I have been, by the Vice-President of Pacific Motor Trucking Company.

Q. Are there any operating rights contained in Exhibit No. 30 which authorize transportation of commodities as a common carrier from either South Gate or Raynier to points in Oregon?

A. No, there are none.

Mr. Bieneman: May I inquire of counsel, would there be anything in such authority to prohibit the applicant as a common motor carrier from accepting traffic from, originating at, those points and delivered to those points by other carriers and delivered to applicant as a connecting carrier?

Mr. Johnson: No. --Will you restate your question?

Mr. Bieneman: I understood the last statement of the witness to be that you had no authority as a common carrier by motor vehicle out of South Gate, for example.

Mr. Meinhold: That is correct.

Mr. Bieneman: I am asking whether there is anything [fol. 508] in the existing certificates as a common motor carrier that would prohibit the applicant from accepting traffic originating at South Gate via another carrier and then delivered to the applicant as a secondary carrier in a two-line service.



By Mr. Meinhold:

Q. Will you answer the question, Mr. Etzel?

A. Pacific Motor Trucking Company has no interstate operating rights out of South Gate or Los Angeles to any of the points involved in this application which would permit it to accept under joint rates or under direct shipment by another line, another truck line, any traffic to those points.

The Witness: Maybe I didn't understand what you were getting at there.

Mr. Bieneman: I will reserve it for cross-examination. I don't think you did.

The Witness: Possibly.

By Mr. Meinhold:

Q. Have you made any investigation to determine whether there are other carriers holding either certificates or permits to transport automobiles in initial movements from the origins involved in this application to any other of the destinations involved in this application?

A. Yes, I have.

Q. And have you prepared an exhibit giving that information?

A. Yes, I have prepared such an exhibit, consisting of eight sheets.

Exam. Linn: The document will be marked Exhibit 31.

[fol. 509] Mr. Jacobson: For identification? I might want to make an objection. May it be for identification at this point? I might want to make an objection.

Exam. Linn: It is for identification at this point.

(Applicant's Exhibit No. 31, Witness Etzel, was marked for identification.)

By Mr. Meinhold:

Q. Do you have copies of the underlying certificates and permits referred to in this exhibit?

A. Yes, I believe they are in the room here.

Q. Do you consider this exhibit to be self-explanatory?

A. I do.

Q. Mr. Etzel, if the Commission should see fit, as a condition to the approval of the pending application, the imposition of restrictions on the common carrier operating authority of Pacific Motor Trucking Company which would prevent the transportation of new automobiles in initial movements between the points involved, would such a condition be acceptable to Pacific Motor Trucking Company?

A. Yes, it would.

Mr. Handler: May I ask, for clarification, Mr. Meinhold, did you include new trucks and buses in that designation of "automobiles"?

Mr. Meinhold: Yes.

Mr. Handler: In other words, the same terms as used in the Commission's commodities description case, automobiles, trucks and buses?

By Mr. Meinhold:

Q. If I asked you the same question and eliminated the word "new" from my question, would you give the same answer?

A. I would. And I would give the same answer I previously did about 10 minutes ago, that we would be agreeable to accepting such a restriction in our common carrier certificated rights between Oakland and points in Oregon where a duplication exists.

Mr. Meinhold: That is all on direct.

Mr. Cronon: I have no questions.

Mr. Burchell: No questions.

Mr. Farrell: No questions.

Cross examination.

By Mr. Jacobson:

Q. In connection with your Exhibit 31, Mr. Etzel, where did you get the information, or what information was available to you with respect to the authorities of Hadley Auto Transport, Robertson Truck-A-Ways, Dallas-Mavis and B & H?

A. We had made a review from our company records of all of the decisions of which we had a record that were granted to those carriers, and we excluded from this review such decisions as involved territory not pertinent to the issues in this case.

Q. Did you have a complete list of all the subs?

A. A complete list of all the subs, and we excluded everything except what appears on this exhibit.

. . . . .

[fol. 511] Mr. Meinhold: We will call Mr. Robinson.

R. J. ROBINSON was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Will you please state your name and address for the record?

A. R. J. Robinson, 96 Redwood Way, Atherton, California.

Q. What is your occupation?

A. I am employed by the Southern Pacific Company as a special representative in the Executive Department in the Bureau of Transportation Research.

Q. What are the functions of the Bureau of Transportation Research?

A. The functions of the Bureau of Transportation Research [fol. 512] search are the preparation of studies involving transportation matters and also the preparation and submission of data to be used before the regulatory bodies. And I am involved in that sort of work.

Q. Have you made any study to determine the transit time for the movement of automobiles by rail from South Gate and Raymer, California, to destinations on the Southern Pacific Company in the states of Oregon, Arizona, Nevada and New Mexico?

A. Yes.

Q. Will you please describe how you conducted this study and your sources of information?

A. The study is based, as indicated on the title sheet, January 14 to January 25, inclusive. You might notice that on the title sheet Oakland, California, has been scratched out. The reason for that was that inadvertently there was a station shown in the exhibit which did not belong in there, and it was the only shipment originating from Oakland, so I eliminated it.

As to the preparation of this exhibit, the underlying documents as the basis for the exhibit were copies of the waybill, which was to secure the date of shipment, the destination and the routing of the carload shipment. The other exhibit used—

Q. (Interrupting) Just a minute. Were those copies of the waybills the copies that were struck off at the time the original waybill was struck off?

A. That is correct. That is the usual procedure on the [fol. 513] railroads.

Q. Very well.

A. The other document used for the information shown on the exhibit under the subtitles of "Arrival Destination", "Delivery Destination" was the demurrage record, which is made at all freight stations on Southern Pacific lines and kept in the regular course of business, and it does show this information among other items that are necessary in the bookkeeping between the railroad and the shippers of carload freight.

Q. Do you have present in the hearing room those copies of waybills and the demurrage sheets?

A. Yes. All of them are here that were used in this exhibit, over on the window ledge.

Now, as—

Q. (Interrupting) Pardon me.—Did you wish to add something?

A. Yes. Under the subtitle of the first page, where it says "Rail Transit Time (Days)", I compiled that by the simple subtraction between the date of shipment and the delivery at destination, to arrive at the days of time in rail transit.

Q. How was the information obtained showing the truck-away transit time, or which shows the truckaway transit time?

A. That was obtained by me from you. You handed me a document that indicated those points and I abstracted them and placed them on this exhibit.

Q. That document is Mr. Booth's Exhibit No. 8?

[fol. 514] A. That is right.

Q. To the best of your knowledge, this is a correct reflection of the information shown on the waybills and demurrage sheets that you have described?

A. That is correct.

Q. And the truckaway time is merely put in for purposes of comparison?

A. That is right.

Mr. Meinhold: You may cross-examine.

May the document be marked, Mr. Examiner?

Exam. Linn: It will be marked as Exhibit 32 for identification.

(Applicant's Exhibit No. 32, Witness Robinson, was marked for identification.)

#### Cross examination.

#### By Mr. Handler:

Q. With respect to the rail transit time shown on Exhibit 32, you stated that you subtracted the time of delivery to the railroads, the time of shipment, from the time of delivery to the consignee?

A. That is correct.

Q. Taking a rail car, when did the time start?

A. For my purpose, it would start when it was received, that day, which in this case, looking at item no. 1 on page 1, at South Gate, California, that indicates for that carload shipment, the date of shipment was January 14. That car [fol. 515] was released to the Southern Pacific Company on the 14th and the waybill was processed on the 14th.

Q. Where is it received, right on the premises of the General Motors Corporation?

A. The shipping document, the shipping order, is received there, a messenger runs between the South Gate plant and the Los Angeles freight station, and the freight bills are typed there.

Q. All right. Now, you computed from that time, let's say we are going to Portland, for example, and if the train arrives in Portland at 2 a.m., or wait a minute, at 11 p.m. on the 1st day of the month, but delivery is not effected to the consignee until 10 a.m. the next day, the second of the month, then you would take the 2nd of the month as a delivery date, would you not?

A. I would take the day of the month that he received the car.

Q. Did you hear Mr. Booth's testimony about Exhibit No. 8?

A. No.

Q. All right. You don't know, then, how he computed the truckaway transit time?

A. No, I do not. I am not concerned with that.

Mr. Handfer: That is all I have.

Mr. Bieneman: No questions.

Mr. Beardsley: No questions.

Mr. Smith: No questions.

Mr. Burchell: No questions.

[fol. 516]

#### OFFER IN EVIDENCE

Mr. Meinhold: I will offer the exhibit, Mr. Examiner.

Exam. Linn: Exhibit 32 for identification is received in evidence.

(Applicant's Exhibit No. 32, Witness Robinson, was received in evidence.)

[fol. 517] C. S. MacKENZIE was sworn and testified as follows:

#### Direct examination.

Mr. Johnson: I might state that Mr. MacKenzie's exhibits were distributed to the parties last Friday.

By Mr. Johnson:

Q. Will you please state your name and business address?

A. C. S. MacKenzie, 65 Market Street, San Francisco, California.



Q. By whom and in what capacity are you employed?

A. I am employed by the Southern Pacific Company. I am Assistant General Auditor.

Q. How long have you been employed by the Southern Pacific Company?

A. I have been employed in the accounting department of the Southern Pacific Company continuously for approximately 34 years. I have held my present position of Assistant General Auditor since October 1949.

Mr. Earp: I don't seem to have a copy of Mr. MacKenzie's exhibits. I wonder if I might have a copy.

Mr. Johnson: Yes.

By Mr. Johnson:

Q. Mr. MacKenzie, who maintains the accounting records [for 518] of PMT?

A. The Pacific Motor Trucking Company is a 100 per cent owned subsidiary of the Southern Pacific Company and the accounting records for the Pacific Motor Trucking Company are maintained in the Southern Pacific Company's Accounting Department by Southern Pacific Company employees.

Q. What, if any, arrangement is made for reimbursement of the Southern Pacific by the PMT?

A. The Southern Pacific charges the Pacific Motor Trucking Company for the cost of the service.

Q. Do you know what the amount is currently?

A. The monthly charge against the Pacific Motor Trucking Company for accounting work done by the Southern Pacific Company at the present time is \$39,242 per month.

Q. What arrangements are made for adjustments of those charges from time to time?

A. A survey is made from time to time as to the volume of work and the time spent by the various accounting department employees and the charge is adjusted from time to time; and particularly, if there is any wage increases, anything of that kind, or any added volume of work, why a new survey is made.

Q. Have certain exhibits been prepared under your direction and supervision for use in this proceeding?

A. Yes.

[fol. 519] Q. Are they true and accurate to the best of your knowledge and belief?

A. Yes.

OFFERS IN EVIDENCE

Mr. Johnson: I would like to offer for identification an exhibit entitled, "Pacific Motor Trucking Company, Statement of Net Income For 11 Months Ended November 30, 1956."

Exam. Linn: That may be marked Exhibit 33 for identification.

(Applicant's Exhibit No. 33, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you proceed to describe this exhibit?

A. This is an exhibit showing the income account of Pacific Motor Trucking Company for the 11 months ended November 30, 1956. The net income for that period is shown on the statement. It is \$665,231.

There are three sheets following, which is a balance sheet statement showing assets and liabilities, and profit and loss account, for the Pacific Motor Trucking Company as of November 30, 1956.

Q. Has information as to the net income for the entire year become available to you since this exhibit was prepared?

A. Yes. At the time we prepared this exhibit the accounts for December had not yet been closed. They have been closed quite recently and we now have the net income for the 12 months ended December 31, 1956.

[fol. 520] Q. Will you please state what that is?

A. \$424,713.

Q. Will you also please state for the record the net income of PMT for the years 1955, 1954 and 1953 separately?

A. The net income for 1955 was \$682,530; for 1954, \$663,091; and for 1953 the net income was \$459,766.

Exam. Linn: Do you have the operating revenues for those years?

The Witness: Yes. The operating revenues for the year 1955 were \$19,886,264.

Mr. Farrell: For 1953?

The Witness: 1955.

The operating revenues for 1954 were \$13,785,139. The operating revenues for the year 1953 were \$11,831,157.

By Mr. Johnson:

Q. Have you prepared an exhibit giving a break-down of the operating revenues shown on Exhibit 33?

A. Yes, I have.

Mr. Johnson: May I offer for identification an exhibit entitled "Pacific Motor Trucking Company, Statement of Gross Revenues"?

Exam. Linn: That may be marked Exhibit 34 for identification.

(Applicant's Exhibit No. 34, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please describe and explain that exhibit? [fol. 521] A. As shown on Exhibit No. 33, the operating revenues for the 11 months ended November 30, 1956, were \$26,357,310. Exhibit No. 34 breaks those operating revenues down as between the revenues from the contract carrier service for General Motors Corporation which is Item 1 of the exhibit.

Item 2 of Exhibit 34 shows the inter-city common carrier and local cartage revenues, for services performed for the general public.

Item 3 is the revenues from rail lines, from the rail lines for substitute service, pick-up and delivery and so forth.

Item 4 is the "Other Revenue."

Q. During the period shown on Exhibit 34 is it not a fact that PMT was operating PFL under a temporary lease authority from the Interstate Commerce Commission?

A. That is my understanding, yes.

Mr. Johnson: I would next like to offer for identification and exhibit entitled, "Pacific Motor Trucking Company,

Statement of Contract Carrier Operations for General Motors Corporation."

Exam. Linn: That may be marked Exhibit 35 for identification.

(Applicant's Exhibit No. 35, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please comment on this exhibit, Mr. MacKenzie?

[fol. 522] A. Exhibit No. 35 shows the revenues and expenses of the contract carrier operations for account of General Motors Corporation for the years 1953, 1954, 1955 and 11 months ended November 30, 1956. Our accounting records are maintained so as to have a segregation of both the revenues and the expenses incurred in connection with the General Motors operations. It shows that for the year 1953 we had a net income from these operations of approximately \$90,699.

Q. I believe those figures are adequately shown on the exhibit. Do you have the net income from this operation for the full year of 1956?

A. Yes. Since we prepared this exhibit the December figures became available. The net income for the full year from the General Motors contract operations, the full year of 1956, was \$129,245.

Q. Have you prepared an exhibit giving the operating ratio based on the contract carrier operation reflected in your Exhibit 35?

A. Yes, I have.

Mr. Johnson: May I have marked for identification an exhibit entitled, "Pacific Motor Trucking Company, Operating Ratio—Contract Carrier Operations for General Motors Corporation"?

Exam. Linn: Exhibit 36 for identification.

(Applicant's Exhibit No. 36, Witness MacKenzie, was marked for identification.)

[fol. 523]

By Mr. Johnson:

Q. What comment do you have with respect to that exhibit?

A. This exhibit shows the operating ratios for the years 1953, 1954, 1955 and 1956, from the General Motors operations, and those operating ratios range from about 84 percent to approximately 88 percent during this period.

Q. Have you also prepared an exhibit showing the PMT investment as of December 31, 1956 in facilities used in the contract carrier operations for General Motors Corporation?

A. Yes, I have.

Mr. Johnson: May I ask that that exhibit be identified as Exhibit 37?

Exam. Linn: It may be so marked.

(Applicant's Exhibit No. 37, Witness MacKenzie was marked for identification.)

By Mr. Johnson:

Q. Will you please comment briefly on this exhibit?

A. This exhibit shows the Pacific Motor Trucking Company investment in equipment and other facilities at the three plants. It shows the accrued depreciation and the depreciated value. These are book figures. The present depreciated value at the end of 1956, of those facilities was approximately \$1,050,720.

Q. Do you have the comparable net investment figure for December 31, 1955?

[fol. 524] A. Yes, I have. The original investment at the end of 1955 in these facilities was \$1,093,694, and the depreciated value of those facilities at the end of 1955 was \$872,384.

Q. Have you made a calculation of the rate of return on the PMT investment?

A. Yes, I have.

Q. And shown in this Exhibit 37 for the year 1956?

A. Yes.

Q. What was that return?

A. Approximately 12 percent.



Q. Do you have a comparable rate of return for the Southern Pacific Company during that period?

A. Yes. I have had occasion to enter the Southern Pacific rate of return in different cases, and I am quite familiar with it. For 1956 the rate of return to the Southern Pacific Lines, was 3.56 percent.

Q. For 1956?

A. Yes—no, that was for 1955. Excuse me. The return for 1956 will be slightly less, somewhat less than that because our operating income for the Southern Pacific has declined in 1956 as compared with 1955, although the rate of return for 1956 has not yet been calculated.

Q. Have you prepared an exhibit entitled, "Automotive Units Transported By Pacific Motor Trucking Company and Gross Freight Revenues from Contract Carrier Operations with General Motors Corporation"?

[fol. 525] A. Yes, I have.

Mr. Johnson: May that be marked for identification?

Exam. Linn: It may be marked Exhibit No. 38 for identification.

(Applicant's Exhibit No. 38, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please comment on this exhibit?

A. This exhibit was prepared from our waybill records of all of the shipments and it covers the year 1955 and the first six months of 1956. It shows the number of units and the PMT revenue as abstracted from the waybills covering the shipments.

Q. Mr. MacKenzie do you know the investment of the Southern Pacific Company in the property leased to the PMT at Melrose?

Mr. Earp: Pardon me. Are you referring to the property leased to General Motors and by them, in turn, leased back to PMT?

Mr. Johnson: No. That is the South Gate situation. I am now speaking of the Melrose operation.

A. Yes, I have that information here.



By Mr. Johnson:

Q. Will you please state what it is?

A. The property owned by the Southern Pacific Company and leased to the Pacific Motor Trucking Company at Melrose for use in the General Motors Contract Carrier Operation, the investment in that property by the Southern Pacific [fol. 526] Company is \$18,672.

Q. Do you have a comparable figure for the Raymer operation?

A. Yes. The property owned by the Southern Pacific and leased to the PMT at Raymer for this operation, the investment in that property is \$101,259.

Q. Do you know what the Southern Pacific Company investment is in the property at South Gate, which is leased to General Motors and, in turn, leased by General Motors to PMT?

A. Yes. The investment in this South Gate property that you mentioned is \$87,213.

Q. Now, will you please state the rentals paid by PMT to the Southern Pacific for the Melrose property, and also give the same information with respect to Raymer and South Gate?

A. The rentals paid to the Southern Pacific Company for the Melrose property is \$367 a month. For the Raymer property it is \$908 a month. The rentals that the Southern Pacific Company collects for the property it leases at South Gate is approximately \$1,944 a month.

Q. Now, with respect to South Gate, from whom does the Southern Pacific collect that rental?

A. That property, as I understand it, is leased by the General Motors people.

Q. What was the South Gate rental figure that you gave?

A. \$1,944.

Q. Who pays that to who?

[fol. 527] A. That is paid by General Motors to the Pacific Motor Trucking Company—to the Southern Pacific Company, I should say.

Q. Do you know what amount PMT pays to General Motors for the sub-lease of that property.

A. Yes. PMT pays the same rental figure to General Motors.

Q. Do you know whether or not PMT in the last two years, has had occasion to make some very substantial capital expenditures?

A. Yes, they have.

Q. Would you give us one or two illustrations?

A. During the last few years Pacific Motor Trucking Company has expended approximately \$5,661,000 for new equipment for use in the Southern Pacific operation of trailer-on-flatcar service, commonly known as piggyback service.

Q. Are those units leased to the Southern Pacific by PMT?

A. Yes, they are.

Q. What expenditure was involved in the PFL acquisition?

A. The expenditure was nearly \$2,000,000 as I recall.

Mr. Johnson: I would like to offer Exhibits 33 to 38 inclusive.

Exam. Linn: They are received in evidence.

(Applicant's Exhibits Nos. 33 to 38 inclusive, Witness MacKenzie, were received in evidence.)

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[fol. 528] L. S. DAVIS, JR. was sworn and testified as follows:

#### Direct examination.

Mr. Cronon: Mr. Examiner, I believe that these exhibits which have been passed out will have to be marked separately. May we have them marked in the order in which they are set up, please.

First, the map, Exhibit 41.

Next, List of Stations in Geographical Order, Exhibit 42.

List of Stations Located on Spokane Portland & Seattle Railway Company, Exhibit 43.

Freight Train Schedules, Exhibit 44.

Statement Showing Number of Carloads, Exhibit 45.

Exhibit Showing Time in Transit, as No. 46.

Spokane Portland & Seattle Railway System Expenditures for Additions and Betterments, Exhibit 47.

Proportion of Loss and Damage Claims, as Exhibit 48.  
Average Revenue Per Ton and so forth, Exhibit 49.

[fol. 529] Exam. Linn: Documents may be so marked for identification.

(Protestant's Exhibits Nos. 41 to 49 inclusive, Witness Davis, were marked for identification.)

By Mr. Cronon:

Q. Will you state your name, occupation and business address.

A. L. S. Davis, Jr., Assistant to the General Freight Agent, 1101 American Bank Building, Portland, Oregon.

Q. How long have you been employed by the Spokane Portland & Seattle Railway Company?

A. Since 1939.

Q. Have you also been associated with the Freight Traffic Department?

A. Yes.

Q. Have you with you, Mr. Davis, some exhibits which were prepared for introduction in this case?

A. I have.

Q. Are they the ones which have been marked Nos. 41 to 49 inclusive for identification?

A. That is correct.

Q. Starting with Exhibit No. 41, will you proceed to explain them?

A. Exhibit 41 is a map showing the Spokane Portland & Seattle Railway Company System. The SP&S portion of the system is outlined in blue, running from Spokane, Washington on the east to Seaside, Oregon, on the west.  
[fol. 530] The Oregon Electric Railway Company is outlined in green, running from Portland, Oregon on the north to Eugene, Oregon on the south.

The Oregon Trunk Railway is outlined in red, running from Wishram, Washington on the north to Bend, Oregon on the south.

The latter two companies are wholly owned subsidiaries of the SP&S Railway Company.

Q. Is the main line of the Southern Pacific Company from California to Portland shown by a fine black line to the left of the green line?

A. Yes, it is. Our line somewhat parallels the Southern Pacific Company between Portland and Eugene.

There is one thing I forgot to comment about on the map, and that is the points of interchange with connecting lines are shown in the little box squares, with a little line drawn to the town and the lines with whom interchange is made is shown in those little boxes. For example, at Spokane, Washington connection is made with the Northern Pacific Railway Company, Great Northern Railway Company, CMSt. P&P Railroad Company, Union Pacific Railroad Company and the Spokane International Railway.

Q. That same explanation will go for every interchange point?

A. That is correct. They are all outlined, the various points of interchange.

Q. Will you now take up Exhibit No. 42?

[fol. 531] A. Exhibit No. 42 is a list of stations in geographical order of the SP&S System showing whether the station is served as an agency or a non-agency station.

Pages 2 to 4 cover the SP&S.

Pages 5 to 6 cover the Oregon Electric Railway and page 7 covers the Oregon Trunk Railway.

The balance is self-explanatory.

Q. What determines whether or not an agent is provided at a station on one of your lines?

A. It depends on the volume of traffic handled at the particular station which, of course, is reflected in the population immediately surrounding that area. If there is very little business in and out of a given station we naturally don't provide an agent at that point.

Q. Would you point out, for the benefit of the Commission, well, take a part of the State of Washington, where you have non-agency stations, and tell us what type of territory that is?

A. For example, on page 4 of the exhibit, the area, approximately from Roosevelt, Washington, which is an agency station, clear through to Spokane, Washington, that is a large wheat producing territory and there is not too large a population at our individual stations. As a result, there are agency stations scattered throughout that territory, but there are many, many non-agency stations.

[fol. 532] Q. That requires billing at the open station then?

A. That is correct.

Q. Now, Exhibit No. 43?

A. No. 43 is a list of stations on the Spokane Portland & Seattle Railway Company System Lines, showing the location and a description of the facilities for the unloading of automobiles from rail cars. The exhibit is, I believe, self-explanatory. The platforms are situated at car level height so that the automobiles can be adequately removed from the rail box cars.

Q. Was the information contained in Exhibits 42 and 43, secured by you or at your direction, from company records.

A. Yes, it is.

Q. Was the map, Exhibit No. 41, prepared by you or someone in your behalf?

A. It was partially prepared by myself and partially by our Engineering Department.

Q. From your knowledge of your company does it truly represent the system, including the interchange points?

A. It does.

Q. Exhibit 44?

A. Exhibit 44 is a statement showing the freight train schedules of the SP&S System between principal points in connection with traffic moving from California.

On page 2 is shown the schedules of the SP&S Railway [fol. 533] Company.

On page 3 is shown the schedules of the Oregon Electric Railway Company.

On page 4 the schedules of the Oregon Trunk Railway are shown.

On page 5 is shown the coordinated schedules of which we participate in by the Bieber Gateway, which is a coordinated joint service of all carriers.

Q. Are those so-called published schedules?

A. Are you speaking with respect to page 5?

Q. I was referring to pages 2, 3 and 4.

A. Some of these schedules are run as extra trains. They are not a published schedule. However, these are



the departure times, that the trains leave and they run very close to those. There is an arrangement, and I don't know whether it is due to a Union agreement or just what it is, but I believe, so far as our scheduled trains are concerned, what we call a scheduled train, that the only train is Train-276 and Train 293, I believe, but these schedules that are shown in the exhibit are the departure times that these trains run on.

Mr. Johnson: Schedule time?

The Witness: That is right.

By Mr. Cronon:

Q. And that information was secured by you from the records of your railroad, is that correct?

A. That is right.

[fol. 534] Q. It doesn't purport to show actual performance, however, does it?

A. No, it does not. However, they run very close to the times there with the exception of the ones—

Mr. Johnson: I object to that. No proper foundation has been laid. This witness has not been qualified to testify to that.

Mr. Cronon: I think that is a proper objection.

Exam. Linn: It may go out insofar as it relates to the actual operating time.

By Mr. Cronon:

Q. Now, take Exhibit No. 45?

A. Exhibit No. 45 is a statement showing the number of carloads, number of tons, and the SP&S system lines division of the freight revenue on carloads of automobiles which terminated on the SP&S system which originated in the State of California for the year 1956.

Q. Was that taken from the records of your company?

A. That is correct.

Q. Do you believe the figures to be true and correct?

A. They are.



Mr. Vaughan: A question there. Does that include all automobile traffic, or only that originating at Chevrolet plants?

The Witness: That covers all automobile traffic.

By Mr. Cronon:

Q. Exhibit No. 46?

[fol. 535] A. Exhibit No. 46 is an exhibit prepared showing the transit time on carloads of automobiles moving from the California area, from the points of origin shown to the various destinations, showing the arrival time at destination, and the actual placement time, together with the days en route, and the days en route including placement for delivery.

I don't believe there is anything else that needs explanation.

Q. I think you mentioned to me you wanted to comment on the third item?

A. Yes. In connection with the third item, car SP 190076, the arrival time is shown as 11:35 a.m. October 13th with the placement time two days later. October 13 was a Saturday and the placement of the car was placed at 9:15 a.m. October 15, which was a Monday.

Q. What is the basis for the information shown in Exhibit 46?

A. These were taken from company records, from the waybill information, and also from the demurrage records.

Q. Do you have those records with you?

A. I have photostatic copies of the waybills, but the demurrage records are in large bound volumes and it would mean quite a chore to have those taken apart and photostatic copies made.

Q. You have the waybills with you?

A. I have photostatic copies of the waybills here in the hearing room, yes.

Q. Exhibit 47?

[fol. 536] A. Exhibit No. 47 is a statement showing the expenditures for additions and betterments, for road and equipment, for the years 1952 through 1956, and the estimated expenditures which will be made for the year 1957.

I believe the balance of the exhibit needs no further comment.

Q. Those figures, of course, were taken from company records?

A. That is correct.

Q. Do you believe them to be true and correct?

A. I do.

Q. Exhibit No. 48?

Mr. Johnson: Just a moment. Were the estimated expenditures for 1957 taken from regular company records?

The Witness: The estimated expenditures for 1957 were taken from the annual budget, which is prepared in advance, and those were submitted to me.

By Mr. Cronon:

Q. All right, Mr. Davis, Exhibit 48?

A. Exhibit No. 48 is a statement showing the proportion of loss and damage claims paid compared to the proportion of gross freight revenue for the handling of passenger and freight automobiles. It shows that our loss and damage per freight car has amounted to 17 cents for the year 1956.

Q. The information is shown on the exhibit itself?

A. It is. I might mention that the Annual Report for the year 1956 has not as yet been submitted to the Interstate Commerce Commission. However, these figures were [fol. 537] obtained from our Accounting Department who prepares that report.

Q. You believe them to be true and correct?

A. I do.

Q. Exhibit 49?

A. Exhibit No. 49 is a statement of the average revenue per ton on freight and passenger automobile traffic originating in California, compared with the average revenue per ton for the six commodity groups shown for the year 1956. It shows the tons of each of the commodities, the revenue, and the average revenue per ton.

Q. Did you set up this exhibit yourself?

A. It was prepared at my direction. Part of it I compiled myself.

Q. Do you believe it to be true and correct?

A. I do.

Q. Mr. Davis, did you make a computation as to the average weight of a car of automobiles from the three General Motors plants involved in this application?

A. I have.

Q. Did you make that computation separate for each one of the three plants?

A. I have.

Q. How did you make the computation?

A. By taking the total number of carloads from each of the three plants and dividing that into the total tons transported from that plant, to come out with an average [fol. 538] weight of so many tons per freight carload.

Q. Now, give these figures separately, if you will, please, as to each of the three plants and designate the plant you are talking about.

A. From South Gate, California—these are cars which originated at the General Motors plants—at South Gate, California, the average was 7.703 tons per freight carload.

Mr. Frizzell: The period?

The Witness: For the year 1956.

A. (Continuing) This only covers traffic which terminated on the SP&S system.

From the Oakland plant, 6.77 tons per freight carload.

From Raymer, California, 6.85 tons per freight carload.

Exam. Linn: I take it these are short tons?

The Witness: That is correct.

By Mr. Cronon:

Q. Has your railroad, or one of its subsidiaries, terminated shipments, for example, to the Oregon Trunk Railway which originated at the General Motors Oakland plant?

A. We have.

Q. And have those shipments been destined to stations between Wishram and Bend, Oregon?

A. They have.

Q. Have you some examples with you, Mr. Davis, taken from records which you have with you, of such shipments?

[fol. 539] A. I have.

Q. Will you proceed to give two or three or four representative examples?

A. We have had shipments moving from the Oakland plant of the General Motors Company to Bend, Oregon, which is shown on Exhibit 41 at the extreme southern end of the red line, which have moved via the Southern Pacific Company to Portland, thence east over the SP&S shown on the blue-line, to Wishram, Washington; thence to south to Bend, Oregon, on the red line.

We have also had shipments via the same route to Redmond, Oregon, which is about 16 miles north of Bend, Oregon, shown on the red line.

Mr. Johnson: May I inquire what this testimony is based on?

The Witness: This last statement?

Mr. Johnson: Yes.

The Witness: On information taken from our company records. However, I don't have that here.

Mr. Johnson: What records are they?

The Witness: From our reports that we have in our office, which we have on file in our office.

Mr. Johnson: In Portland?

The Witness: Yes, in Portland.

Mr. Johnson: Are they here with you?

The Witness: No. Just a moment, I believe I have an [fol. 540] example of some of these here on these photostatic copies.

Yes, I have an example of one photo copy of one waybill here, covering destination, Redmond, Oregon, which is included in Exhibit 46.

By Mr. Cronon:

Q. You might give the car number on that right now, Mr. Davis.

A. That is on the fourth line from the bottom of Exhibit 46.

Mr. Johnson: How about the Bond, Oregon shipments?

The Witness: I don't have any records here on that.

The Redmond, Oregon car is indicated on Exhibit 46 as SP 682294, the fourth one from the bottom of the exhibit. I do have a photo copy of that waybill here.

By Mr. Cronon:

Q. Mr. Davis, do you know of your own knowledge that there are other shipments besides the ones shown on Exhibit 46 which moved over that route?

Mr. Johnson: I object to that as not being the best evidence.

Mr. Cronon: He has knowledge of it, Mr. Examiner.

Exam. Linn: He may indicate how he gained such knowledge.

A. I have personally examined our records in Portland that we have in our office. I might mention what those records are. We have a report in our office which is forwarded to our office from each of our agents, showing the car number, the date, the origin, the consignee, the weight, and the freight charges, and the route. That information is tabu-[fol. 541] lated from the waybill which the agent terminates, and those reports are in our office, that is where this information was obtained.

Mr. Cronon: Mr. Examiner, I don't know whether that is an actual objection, but it seems to me that a man in the freight traffic department of the SP&S can testify that he knows from his own knowledge of shipments over certain routes. He has to do with rates and traffic.

Mr. Johnson: I wasn't making an objection. You asked if he knew of his own knowledge. I wanted to know the basis for the statement. Now, he says it is certain records. That is all I care about.

By Mr. Cronon:

Q. I have forgotten, Mr. Davis, but did you mention the railroads involved in that route when you were giving your testimony?

A. I believe I did. You are talking about the routes to Bend and Redmond?

Q. Yes, out of Oakland.

A. I believe I did.

Q. That is all right, then. Have you computed the rail mileage from Portland to Wishram?



A. Yes. The distance from Portland to Wishram, Washington is 106 miles. The distance from Wishram, Washington to Redmond, Oregon is 135 miles. The distance from Wishram, Washington to Bend, Oregon is 151.5 miles.

Q. Do you know, Mr. Davis, whether or not there is a [fol. 542] more direct rail route to Redmond and Bend, Oregon from Oakland, California than the one you have just been testifying about?

A. Yes, there is.

Q. What is that route?

A. Shipments could move via the Western Pacific to Bieber, California, Great Northern Railway to Bend, Oregon; thence Oregon Trunk Railway to Redmond, Oregon.

Q. Is there also a route via the Southern Pacific out of Oakland into Klamath Falls to Chemult?

A. Yes. There is a route available by the Southern Pacific to Chemult, Great Northern to Bend, Oregon, and thence Oregon Trunk to Redmond, Oregon, also.

Q. Do you have any similar examples in connection with movements out of Oakland, California to Eugene or Salem, Oregon?

A. Yes. We have had shipments move via the Bieber gateway route from Oakland to both Eugene and Salem, Oregon; moving via the Western Pacific to Bieber, California, thence Great Northern to Portland, Oregon, which route follows over the Oregon Trunk and SP&S Railway. However, it is actually a Great Northern movement from Bend to Portland, Oregon, and there delivered to the Oregon Electric Railway for destinations, Salem and Eugene, Oregon, as shown on the green line in Exhibit 41.

Q. That is through Wishram, Washington?

A. Wishram, Washington, yes.

[fol. 543] Mr. Johnson: May I inquire how many shipments you have had of that sort?

The Witness: To Eugene?

Mr. Johnson: Yes.

The Witness: In 1956 we had four carloads to Eugene, and three carloads to Salem.



## OFFERS IN EVIDENCE

Mr. Cropon: I will offer Exhibits 41 to 49 inclusive, and that completes my direct.

[fol. 544] RAY B. NEEDHAM was sworn and testified as follows:

Direct examination.

By Mr. Andersen:

Q. State your full name, please.

A. Ray B. Needham.

Q. Your business address?

A. 107 West South Temple Street, Salt Lake City.

Q. Will you give your title, please?

A. Vice President in Charge of Traffic, Bamberger Railroad Company.

Q. How long have you been in the Traffic Department of the Bamberger Railroad Company?

A. Some 36 years.

Q. Mr. Needham, have you prepared certain documents for presentation at this hearing and were they prepared under your direction and control?

A. They were, yes.

[fol. 545] Q. Were the facts and figures therein taken from the company records?

A. They were.

Q. And to your knowledge and belief are they true and accurate statements?

A. Yes, they are.

Mr. Andersen: May I have this marked for identification, Mr. Examiner?

Exam. Linn: The document may be marked Exhibit No. 50 for identification.

(Protestant's Exhibit No. 50, Witness Needham, was marked for identification.)

By Mr. Andersen:

Q. Mr. Needham, referring to the Exhibit that has been marked Exhibit No. 50, and turning to the map, which constitutes sheet 1, would you explain what this map purports to show, please?

A. This is a map showing the geographical location of stations on the Bamberger Railroad showing Ogden, Utah as the northern terminus; Salt Lake City, Utah as the southern terminus.

Q. Would you indicate what the stars mean and give their locations?

A. The stars at the various stations indicate that there is an unloading auto dock at these points.

Q. Would you read into the record the names of these places?

A. Salt Lake City, Bountiful, Layton and Ogden. [fol. 546] Q. Does this map also purport to show, Mr. Needham, the points of interchange with connecting railroads?

A. Yes, it does.

Q. Would you indicate what those points of interchange are and with what railroad the Bamberger Railroad interchanges with at those points?

A. Beginning on the south part of the map, D&RGW. Western Pacific, designated as "Transfer." That should be "Interchange." I would like the word "Interchange" there rather than "Transfer." That is at what we call Salt Lake Junction, south of Salt Lake City, outside the Salt Lake City switching limits.

Further up the map you will note the Union Pacific interchange. That is within the confines of the switching limits of Salt Lake City.

North, to North Salt Lake, you will note an interchange with the D&RGW.

At Ogden, Utah, we have a connection with the Union Pacific and Southern Pacific, also with the D&RGW.

Q. Now, referring to Sheet 2, Mr. Needham, would you briefly explain what constitutes this sheet?

A. Sheet No. 2 gives a list of agency and prepay stations on the Bamberger Railroad, showing the location of the freight junction, freight interchanges.

Q. Am I correct in saying, Mr. Needham, that the places where the auto unloading docks are found are indicated on [fol. 547] here as being agency stations?

A. Yes, sir.

Q. Referring to Sheet No. 3, Mr. Needham, will you explain briefly what the figures are that constitute this sheet?

A. Sheet No. 3 is a consolidated statement of improvements completed or in the course of construction on the Bamberger Railroad main line between Salt Lake City and Ogden, during the years 1952 to the present time.

Q. Would you explain briefly, Mr. Needham, the estimated figures that appear at the bottom of this sheet, that is, beginning with "Replacing Rail in Main Tracks Between Salt Lake and Ogden, 1.92 Miles," estimated figure of \$92,050.12?

A. That covers the replacing of 75 pound rail to 90 pound rail and, in some cases, 112 pound rail.

On the spur tracks, the estimated figure of \$31,000 odd that covers the replacement of 75 pound rail to 85 and 95 pound rail.

Q. Has this work been started and is it currently in progress?

A. Yes, sir.

Q. Referring to the \$60,000 that is indicated at the bottom of that sheet, Mr. Needham, is this work being progressed at this time?

A. It is.

Q. Referring to the fourth sheet which is entitled "Recapitulation 1956," would you explain briefly what this is? [fol. 548] A. That shows the number of carloads by months, also the total freight charges, and the Bamberger Railroad revenue proportion covering carloads of automobiles coming under the category of this application.

Q. That is, automobiles moving from the General Motors plants in California that we are here concerned with, is that right?

A. That is right.

Q. Are there any figures deducted, Mr. Needham, from the total freight charges, such as loading and unloading charges?

A. Yes. In many cases there are loading allowances at the point of origin, based on \$2 per car and then at destination the rates charged include the unloading and delivery of the automobiles to the consignee. That delivery is either accomplished by the railroad itself, or where the consignee chooses to unload and haul his own automobiles to his place of business, there is a provision for an allowance to the consignee on the basis of his actual cost of that service with a maximum of \$5 per automobile.

Q. Is that figure paid by the delivering carrier, which is Bamberger, to the consignee?

A. It is paid by us but absorbed proportionately by all the carriers involved in the traffic.

Q. Mr. Needham, on the Bamberger Railroad do you publish train schedules?

[fol. 549] A. No, we don't publish train schedules as such.

[fol. 550] Cross examination.

[fol. 551] By Mr. Johnson:

Q. How many cars did you handle of Ford automobiles from California?

A. Quite a number of them.

Q. Do you have any record of that with you?

A. I can get the information.

Q. Do you have it right now?

A. It is available.

[fol. 552] Q. Are you prepared to answer right now on that?

Mr. Andersen: I will stipulate with counsel that we have the number of cars handled.

A. I haven't got the information in front of me, but it is available.

By Mr. Johnson:

Q. How about Mercury, do you have any data on that?

A. No. We don't handle any Mercurys.

Q. How about any other types of cars, Studebakers, and so forth?

A. Are you speaking of the Pacific Coast?

Q. Yes, from California.

A. No, I don't recall that we handled any Studebakers.

Q. How about Chryslers?

A. No, sir.

Q. As a matter of fact, there is quite a truckaway movement from California points into Utah, isn't there?

A. Too much to suit us.

Q. You know as a matter of fact that the other automobile assemblers are using truckaway to quite an extent, aren't they?

A. I would assume they are using that method.

Q. You have seen them, haven't you?

A. Yes.

[fol. 553]

#### OFFER IN EVIDENCE

Mr. Andersen: At this time I offer in evidence Exhibit No. 50 for identification on behalf of the Bamberger Railroad Company.

Mr. Johnson: No objection.

Exam. Linn: Exhibit 50 for identification is received in evidence.

(Protestant's Exhibit No. 50, Witness Needham, was received in evidence.)

Mr. Cronon: I have passed out a set of exhibits which I ask be marked for identification at this time.

I ask that the map be marked as Exhibit 51 for identification.

Exhibit 52 will be the list of stations in geographical order, located on the Portland Traction Company, where there are facilities for handling freight.

Mr. Johnson: What witness will these exhibits be introduced through?

Mr. Cronon: Mr. Schlaf.

The list of stations located on the Portland Traction Company, where there are facilities for unloading from rail cars, will be Exhibit 53.

The interchange schedules will be Exhibit 54.

The statement showing number of carloads and tons, Exhibit 55.

[fol. 554] Time in transit, Exhibit 56.

Expenditures, Exhibit 57.

Proportion of loss and damage claims, Exhibit 58.

Average revenue, Exhibit 59.

Exam. Linn: The documents may be marked in the manner specified.

(Protestant's Exhibits Nos. 51 to 59 inclusive, Witness Schlaf, were marked for identification.)

Mr. Lyons: Before counsel proceeds, Mr. Examiner, on behalf of the Insured Transporters, Inc., inasmuch as we have been unable to ascertain when our witnesses will be ready to proceed, we ask leave at this time to dismiss the application of Insured Transporters, Inc.

Exam. Linn: I believe that is a request which should be made on the record in the Insured Transporters, Inc. case.

We will go off the record in this case now on hearing.

(Remarks off the record.)

Exam. Linn: Back on the record in the PMT case.

Mr. Cronon: I will call Mr. Schlaf.

FRED V. SCHLAF was sworn and testified as follows:

By Mr. Cronon:

Q. Will you state your name, and spell your last name, please?

A. Fred V. Schlaf—S-e-h-l-a-f.

Q. Will you state your business address?

[fol. 555] A. 1635 Southeast Water Avenue, Portland Oregon.

Q. By whom are you employed?

A. By the Portland Traction Company.



Q. In what capacity?

A. As Traffic Manager.

[fol. 556]

OFFERS IN EVIDENCE

Mr. Cronon: I will offer Exhibits 51 through 59 inclusive.

Mr. Johnson: I have no objection, except to the transit time exhibit, which I am willing to waive my objection subject to our stipulation.

Mr. Cronon: Yes.

Mr. Johnson: Can that be understood as to all transit time exhibits so I won't have to repeat it?

Exam. Linn: Do you have in mind that applicant may desire to produce an exhibit showing transit time?

Mr. Johnson: Yes, and also an exhibit showing gross revenues on the shipments.

Mr. Cronon: In other words, neither party will have to produce the underlying documents.

Mr. Johnson: That is correct.

Mr. Cronon: Agreeable.

Exam. Linn: Exhibits 51 through 59 are received in evidence.

(Protestant's Exhibits Nos. 51 through 59 inclusive, Witness Schlaf, were received in evidence.)

Exam. Linn: Have you completed your inspection of the documents underlying the exhibits of the witness, Davis?

Mr. Johnson: We were going to look at the waybills which have been brought here in support of Exhibit 46. We have done so. They will not enable us to check train arrival, or actual placement time. However, we are perfectly willing to be governed by this overall stipulation which covers that point.

[fol. 557] Exam. Linn: Exhibits 41 to 49 inclusive are also received in evidence at this time.

(Protestant's Exhibits Nos. 41 to 49 inclusive, Witness Davis, were received in evidence.)

[fol. 558] H. E. SHUMWAY was sworn and testified as follows:

Direct examination.

[fol. 559] Exam. Linn: The witness will proceed with the reading of the statement, down to the first full paragraph on page 11, and at that point you may state your objection, Mr. Johnson.

A. (Reading) My name is H. E. Shumway. I am employed as General Superintendent of Transportation for the Union Pacific Railroad Company, with offices at 1416 Dodge Street, Omaha, Nebraska. I have been employed by the Union Pacific Railroad Company for 40 years in the Operating and Transportation Departments and have held my present position for a total of about 8 years.

I am familiar with the scope of the applications in [fol. 560] volved in these proceedings and at direction of counsel, certain exhibits have been prepared by me, or under my supervision.

There has been marked for identification as Exhibit 60, a multiple page exhibit consisting of nine parts. Part A of said exhibit is a map of the Union Pacific System showing principal points served. Red circles on the exhibit indicate interchange points where the Union would normally receive involved traffic, black circles indicate locations of automobile assembly plants involved and green boundary indicates states involved.

The assembly plants at Oakland, California, South Gate, California and Raymer, California are located on Southern Pacific. The Southern Pacific furnishes the equipment for loading at Oakland, California, Raymer, California and South Gate, California. However, we do on occasion when requested furnish the Southern Pacific automobile cars for movement to South Gate for loading.

Part B of the exhibit consists of statement of equipment owned and on order by Union Pacific Railroad suitable for movement of new automobiles, trucks and buses as of November 9, 1956 and shows that the Union Pacific on that date owned 5,877 cars and had 500 cars on order

to be built in Union Pacific Shops December 1956 through April 1957 suitable for handling of involved traffic.

Part C of the exhibit consists of a list of open and [fol. 561] prepay stations of the Union Pacific in the involved states. Stations marked with an asterisk are non-agency stations. All other stations are agency stations.

Part D of the exhibit consists of a list of stations of the Union Pacific in the involved states having facilities for unloading automobiles, trucks and buses and it indicates side or end loading and car capacity.

Page 1 of Part E consists of published freight train schedules from Ogden, Utah to Provo, Utah. Page 2 consists of published schedules from Los Angeles, California to principal points on the Union Pacific in the involved states. Page 3 consists of published schedules from Wells, Nevada to principal points on the Union Pacific in the involved states. Page 4 consists of published schedules from Portland, Oregon to principal points on the Union Pacific between Portland, Oregon and Seattle, Washington and page 5 consists of published schedules from Portland, Oregon to principal points east of the Union Pacific in the states of Oregon, Washington and Idaho. Another witness will testify in detail with respect to these schedules.

Part F of the exhibit consists of a 2. page statement showing transit time during one week period of shipments of involved traffic originating in California to points in destination states involved. It indicates car initial and number, point of origin, billing date, destination, routing, time, place and date received from connecting carrier, time and date departed from point of receipt, time and date [fol. 562] placed at Union Pacific destination or place, time and date delivered to connecting carrier for off line destinations.

[fol. 563] Mr. Burchell: I have no further questions.

[fol. 564]

## OFFERS IN EVIDENCE

I offer Exhibits 60 and 61.

Mr. Johnson: I have no objection to Exhibit 60, subject to our stipulation.

I do object to Exhibit 61 as being entirely irrelevant and burdening the record. I don't think that pictures of PFE ice docks, refrigerator equipment, and other facilities in the eastern part of the country, are at all material. I think it is desirable to keep a record of this sort within some reasonable bounds.

Mr. Burchell: The purpose of the exhibit, as stated in the testimony of the witness, is to show the facilities which the Union Pacific is required to maintain for the transportation of general freight and of passengers of all types. I submit it is very material. This application involves the question of public interest.

Exam. Linn: The objection is overruled.

Exhibits 60 and 61 are received in evidence.

(Protestant's Exhibits Nos. 60 and 61, Witness Shumway, were received in evidence.)

[fol. 565]

## Cross examination.

By Mr. Johnson:

Q. Now, on your exhibit showing Union Pacific ownership of freight cars loaded with automobile loading devices, in what service do you normally use those cars?

A. Are you talking about Part "J"—which exhibit are you referring to?

Q. You do own a number of freight cars that are equipped with loading devices?

A. Part "J" shows the Union Pacific owns 1376.

Q. Now, normally where do you use those cars?

A. We use them in the automobile loading territories, used at all points where we have the loading of automobiles that requires that type of equipment.

Q. Where are those points?

A. They are at numerous points. You mean in this particular territory?

Q. I mean where you use these cars.

A. We use them at all assembly plants in the United States where they may be spotted for loading; where required.

Q. Assembly plants served by the Union Pacific?

A. Sometimes they are used on other lines.

Q. What plants do you serve?

A. Well, we serve a lot of them.

Q. What are they?

A. Well, we serve the BOP at Kansas City for one. We furnish them a lot of cars.

[fol. 566] Q. What other plants do you serve?

A. I can't recall right now just where they all are.

Q. How many cars have you provided for this BOP movement in California?

A. I have no records with me on that. It is substantial.

Q. You made the statement in your direct testimony, "However, we do on occasion when requested, furnish the Southern Pacific automobile cars for movement to South Gate for loading." You don't have any figures with you on that?

A. Yes. I can tell you that on August 10, 1956 they called upon us for help and we gave them 26 on this one day. On October 3, 1956, they called for help and we gave them 54.

Mr. Burchell: At South Gate?

The Witness: Yes, at South Gate.

On October 8, 1956, we gave them 40, and on November 15 we gave them 12.

That is representative.

By Mr. Johnson:

Q. You don't have any cars regularly assigned to that service, do you?

A. No; that is, serving the Southern Pacific.



[fol. 567] L. C. CHAMBERLIN was sworn and testified as follows:

Direct examination.

By Mr. Burchell:

Q. Will you state your name and address, please?

A. L. C. Chamberlin, 1416 Dodge, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

[fol. 568] A. Union Pacific Railroad, Auditor of Freight Accounts.

Q. How long have you held that position?

A. Since May 1, 1954.

Q. How long have you been employed by the Union Pacific?

A. Approximately 32 years.

Q. Has most of that experience been in the Accounting Department?

A. It has all been in the Accounting Department.

Q. What positions have you held prior to your present position?

Mr. Johnson: I am willing to admit his qualifications.

Mr. Burchell: Thank you. I will withdraw the question.

By Mr. Burchell:

Q. Have you prepared certain exhibits for presentation in this proceeding?

A. Yes, sir.

Q. Were these exhibits prepared by you or under your supervision?

A. Yes, sir.

Mr. Burchell: Mr. Examiner, I ask that there be marked for identification, as the next exhibit in order, a one-page document entitled in part, "Volume of Traffic of New Automobiles, Trucks and Buses Originated in California and Terminated on the Union Pacific in Specified States During the Period September 1, 1955 Through August 31, 1956." That will be Exhibit 62.

As Exhibit 63, a one-page document entitled "Volume of Traffic of New Automobiles, Trucks and Buses Orig-



inated in California and Delivered to Connecting Carriers During the Periods September 1, 1955 Through August 31, 1956."

[fol. 569] And as Exhibit 64 for identification a one-page document entitled "Average Revenue Per Ton on Automobile Traffic (Freight and Passenger) Originated in California Compared with Average Revenue for Indicated Commodity Groups For the Period September 1, 1955 Through August 31, 1956."

Next, as Exhibit 65 for identification, a one-page document showing loss and damage claims paid compared to gross freight revenue.

Exam. Linn: The documents may be marked in the order indicated.

(Protestant's Exhibits Nos. 62, 63, 64 and 65, Witness Chamberlin, were marked for identification.)

By Mr. Burchell:

Q. Will you refer to what has been identified as Exhibit No. 62, entitled "Volume of Traffic of New Automobiles . . . Originating in California on the Union Pacific In Specified States," and state what record that was prepared from?

A. That was prepared from the underlying detail for Schedule 941 of the Annual Report to the various State Commissions. It includes the original waybills, both our local and interline received waybills.

Q. Was that prepared in your office?

A. Yes, sir. The details were prepared in my office and transmitted to the General Auditor's Office for consolidation.

Q. Will you refer to Exhibit 63 and state how that was prepared—was that from the same records?

[fol. 570] A. Exhibit 63 was prepared from the interline copies of waybills, which are the underlying detail for Schedule 941 of the Annual Report to the various State Commissions, and our Form 922, which are the Agent's report on the waybills delivered to connecting carriers, and Underlying Detail for Schedule 941 of the report to the Interstate Commerce Commission.

Mr. Frizzell: What exhibit are you referring to?

Mr. Burchell: Exhibit No. 63.

By Mr. Burchell:

Q. Had you completed your answer?

A. Yes.

Q. Will you refer to what has been identified as Exhibit 64 and entitled, "Average Revenue Per Ton on Automobile Traffic." Was that prepared under your supervision?

A. Yes.

Q. And referring to Exhibit 65, showing loss and damage claims paid compared to gross freight revenue, was that prepared under your supervision?

A. Yes, in conjunction with information received from our General Claims Agent.

Q. Why were the commodities under lines 3, 4, 5, 6 and 7 included in this exhibit?

A. Because the loss and damage claims paid out, as compiled in the General Claims Department under Claim Commodity Classification 26, include those six commodity classifications.

Q. That would show the loss on those, as well as automobiles?

[fol. 571] A. Yes. There is no segregation for automobiles, passenger or freight separately.

Q. This average under line 9, average amount of claims paid per car, is on all of those commodities?

A. Yes, sir.

#### OFFERS IN EVIDENCE

Mr. Burchell: I offer Exhibits 62 through 65, and tender the witness for cross-examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 62 through 65 inclusive are received in evidence.

(Protestant's Exhibits Nos. 62, 63, 64 and 65, Witness Chamberlin, were received in evidence.)

[fol. 572] C. C. WEEDIN was sworn and testified as follows:

Direct examination.

Mr. Burchell: I have distributed a statement of the witness, Weedin, and one exhibit. May the exhibit be marked for identification?

Exam. Linn: Exhibit 66 for identification.

(Protestant's Exhibit No. 66, Witness Weedin, was marked for identification.)

By Mr. Burchell:

Q. Will you state your name and address, please?

[fol. 573] A. C. C. Weedin, 1416 Dodge Street, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

A. Union Pacific Railroad Company as General Freight Service Manager.

[fol. 574] Cross examination.

[fol. 575] By Mr. Johnson:

Q. If that so-called joint arrangement that you suggested had proven feasible and been accepted, would you have any objection to this application?

A. We didn't conclude that it was feasible, but we proposed that it be studied with the thought that if it was found to be desirable and necessary to maintain the traffic interests, we would have gone along with it, at least I would have recommended it.

Q. The essence of your testimony, Mr. Weedin, as I follow it, is that the Union Pacific has been encountering truck competition in recent years?

A. Yes.

Q. And that you have lost some traffic to the trucks, that is true, isn't it?

A. Yes.

Q. The Union Pacific is not unique in this respect, is it, I mean in the railroad family?

A. I don't understand.

Q. That has been true of the railroad industry generally, hasn't it?

A. Yes, that is right.

Q. And isn't it true that your company has resisted that trend in proceedings before the Interstate Commerce Commission and elsewhere without success?

A. We have made such efforts, and have seen the trend, yes.

[fol. 576] Q. Unfortunately there are lots of shippers that want truck service, isn't that a fact?

A. I think that is right.

Q. Now, I assume these studies you referred to have included the movement of automobile traffic. Has the trend we have been talking about, diversion to trucks, been experienced in the territory you serve out of Kansas City, let us say, with respect to automobiles, automobile traffic?

A. I believe the trend is similar there, yes.

Q. As a matter of fact, isn't it generally true throughout the country that the manufacturers of automobiles, for one reason or another, are using truckaway service to an increasing extent?

A. Many of them are, yes.

Q. Isn't that generally true?

A. I think it is true to say to an increasing extent, yes.

Q. Now, let us just take, for example, traffic originating in California and destined to Idaho, for example, which is served by the Union Pacific. Hasn't there been an increasing truckaway movement of Fords to Idaho from the Ford plant in California?

A. Yes, I think that is right.

Q. Isn't it true that General Motors competitors in California have this service available to them and are utilizing it?

A. I thought all such shippers had it available to them.

[fol. 577] Mr. Burchell: I will call Mr. Watson.

G. M. WATSON was sworn and testified as follows:

Direct examination.

Mr. Burchell: I have two exhibits I would ask to be identified.

Exam. Linn: They may be marked as Exhibits 67 and 68 for identification.

(Protestant's Exhibits Nos. 67 and 68, Witness Watson, were marked for identification.)

[fol. 578] By Mr. Burchell:

Q. Will you state your name and address, please?

A. My name is G. M. Watson. By business address is 1416 Dodge Street, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

A. I am Assistant Freight Traffic Manager of the Union Pacific Railroad Company at Omaha.

[fol. 579] Cross examination.

By Mr. Johnson:

Q. Turning to your Exhibit 67, the first page, as I follow the exhibit it shows an increased number of automobiles, let us say, in the state of Idaho over a period of years since 1929, for instance 1955, and also that during that period the number of automobile ownerships had gone up. The number of automobiles, however, that the Union Pacific has terminated has actually gone down.

A. That is correct.

[fol. 580] Q. What is your interpretation of that?

A. Well, the only interpretation that I can make from that is that other forms of transportation are being used to transport the automobiles.

Q. That would include truckaway, wouldn't it?

A. Right.

Q. If we deal with Idaho, we know, don't we, that no General Motors units have moved into that state by other than rail from California?

A. I don't know that.

Q. Do you know of any truckaway of General Motors products?

A. No.

Q. Do you know whether or not Ford and Chrysler are using truckaway to Idaho?

A. I have heard that stated, but I don't know that of my own knowledge.

Q. You have simply made this tabulation for competitive purposes?

A. That is right.

Q. And your general interpretation of all the pages of the exhibit is that it does reflect a diversion from rail to other forms of transportation?

A. That is right.

Mr. Johnson: That is all I have.

Exam. Linn: Is Exhibit 67 limited to traffic from California origins, or from origins throughout the United States?

[fol. 581] The Witness: From all origins in the United States terminated in the various states.

Exam. Linn: Any redirect?

Mr. Burchell: No.

Exam. Linn: That is all. Thank you.

(Witness excused.)

Mr. Burchell: The exhibits were received?

Exam. Linn: They were received, yes.

Mr. Farrell: I will call Mr. Marty as the next witness.

A. H. MARTY was sworn and testified as follows:

Direct examination.

Mr. Farrell: Could we have the exhibits marked, Mr. Examiner?

Exam. Linn: You indicate the order in which they are to be marked.

Mr. Farrell: The first one will be the map, Exhibit 70. The second one is the document showing the auto unloading facilities, which would be Exhibit 71.



Third is the freight train schedules in Montana, Idaho, Washington and Oregon, Exhibit 72.

The next one, time and transit study, Exhibit 73.

Exam. Linn: The documents may be so marked.

(Protestant's Exhibits Nos. 70, 71, 72 and 73, Witness Marty, were marked for identification.)

By Mr. Farrell:

Q. Will you state your full name?

{fol. 582} A. A. H. Marty.

Q. What is your address, Mr. Marty?

A. 176 East Fifth Street, St. Paul, Minnesota.

Q. By whom are you employed?

A. Northern Pacific Railway.

Q. In what position?

A. General Car Service Agent.

Q. What has been your experience?

A. I have worked as General Car Service Agent for the last five years. Prior to that I had ten years as a Travelling Car Service Agent. Prior to that, back as far as 1915, I was working on various positions in the Operating Department.

Q. What are your present duties as General Car Service Agent?

A. My present duties have to do with car allocation, service orders, and so forth, in connection with transportation.

Q. Turning now to Exhibit No. 70, will you identify that, please?

A. That is a map of the Northern Pacific Railway on which I have circled in red the interchange points in connection with this case, like Portland with the Southern Pacific and SP&S; at Pasco with the SP&S; at Spokane with the SP&S; and at Butte with the Union Pacific.

Q. Those are the points of interchange which would be involved in connection with this application?

A. That is right.

## [fol. 583] OFFERS IN EVIDENCE

We offer in evidence Exhibits 70 through 73 inclusive.  
Exam. Linn: They will be received in evidence.

(Protestant's Exhibits Nos. 70 to 73 inclusive, Witness Marty, were received in evidence.)

## [fol. 584] Recross examination.

By Mr. Johnson:

Q. As long as you are talking about cars, are there any Northern Pacific cars which were used in the movement shown on this exhibit?

A. Not a one.

Q. Do you own any automobile cars?

A. We own 94 auto rack cars, 40 foot; Evans auto rack cars, 94 of them, 40 foot.

Q. Where do you use those cars?

A. Well, they are used on the east end where we get a [fol. 585] few loads coming out of the head of the Lakes, shipped by boat, moving into Montana and various points. Also we have requests every now and then for loading at Detroit, Michigan on the Grand Trunk Western. As a rule, however, there isn't much demand for the 94 cars that we own, which go into plywood loads, or whatever loading we can get.

Q. Are they all 40 foot cars?

A. Right, 40 foot; 10 foot wide.

Q. Shippers like a bigger car?

A. That is right.

Q. Referring to your Exhibit 73, is that a complete list of automobile shipments during that period from California?

A. Correct.

Q. And to—

A. To points on our line.

Mr. Farrell: Terminated by us?

The Witness: Yes.

Mr. Johnson: That is all.

Further redirect examination.

By Mr. Farrell:

Q. Has the Southern Pacific requested us to provide any cars to service their accounts in California?

A. Not to my knowledge.

Mr. Johnson: Would you know—you are not in the operating department, are you?

The Witness: Yes, 41 years in the operation.

[fol. 586] By Mr. Farrell:

Q. Do we furnish cars to our shippers on shipments originating in the Pacific Northwest and moving into California?

A. Yes.

Q. Whose cars are those?

A. Our equipment and other equipment that we receive.

Mr. Farrell: Nothing further.

Mr. Johnson: Nothing further.

Exam. Linn: You are excused.

(Witness excused.)

Mr. Farrell: I will call Mr. Jackson.

FRANK W. JACKSON was sworn and testified as follows:

Direct examination.

Mr. Farrell: May we start out by marking these exhibits.

The 1-page sheet, showing the number of miles of railroad by states will be Exhibit 74.

The next one, consisting of 15 pages, showing the agency and non-agency stations, will be Exhibit 75.

Next, a document showing the revenue by commodity, for 19 commodities will be Exhibit 76.

The one sheet showing carloads of automobiles will be Exhibit 77.

Next, the sheet showing system average revenues, will be Exhibit 78.

[fol. 587.] The sheet showing cost of major improvements to the System, will be Exhibit 79.

The estimated cost of major improvements for 1956 and 1957, will be Exhibit No. 80.

The document showing the motive power will be Exhibit 81.

The operating revenues, will be Exhibit 82.

The average revenues by major commodity groups will be Exhibit 83.

Exam. Linn: The documents may be marked for identification in the manner indicated.

(Protestant's Exhibits Nos. 74 to 83 inclusive, Witness Jackson, were marked for identification.)

By Mr. Farrell:

Q. State your full name and business address.

A. Frank W. Jackson, Northern Pacific Building, St. Paul 1, Minnesota.

Q. What is your position?

A. Assistant Statistician.

Q. How many years have you been employed by the Northern Pacific?

A. About 38 years.

[fol. 588]

#### OFFERS IN EVIDENCE

Mr. Farrell: We offer Exhibits 74 through 83 inclusive in evidence and tender the witness for cross-examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 74 to 83 inclusive are received in evidence.

(Protestant's Exhibits Nos. 74 to 83 inclusive, Witness Jackson, were received in evidence.)

[fol. 589] C. E. FULTON was sworn and testified as follows:

Direct examination.

By Mr. Farrell:

Q. State your name and address, please.

A. C. E. Fulton, 200 Smith Tower, Seattle, Washington.

Q. What is your position, Mr. Fulton?

A. Assistant Western Freight Traffic Manager.

Q. For what company?

A. Northern Pacific Railway.

[fol. 590] During the past 25 years the rail lines have experienced increasingly severe competition from other forms of transportation and the Northern Pacific has been no exception. For example, in 1939 the rail lines transported 62.4 percent of the intercity ton miles of freight, while in 1955 this dropped to 49.4 percent.

The Northern Pacific is well aware of the changing trends in transportation, such as faster transit time, special equipment, mechanical refrigeration, store-door delivery, etc. To speed up our transit time we have spent large sums of money in elimination of curves, improving roadbeds and recently completed the only electronic retarder yard in the Pacific Northwest at Pasco, Washington. These improvements and the purchase of diesel locomotives have enabled us to speed up our freight trains to the point where they operate on practically passenger train schedules. We have also built special equipment for handling commodities manufactured by the Atomic Energy Commission at Richland, Washington, the Boeing Airplane Company at Seattle, Washington, and others. We are also expanding our fleet of mechanical refrigerator cars, DF cars, covered hopper cars, [fol. 591] and other special purpose cars to provide our shippers with the finest possible service. We recognize that in the Pacific Northwest there are a few small communities not directly served by rail and to serve these communities we just recently supported the application of Transport Storage and Distributing Company of Seattle in Docket



MC-108121 which seeks authority to transport automobiles in connection with prior rail movement.

The mileage from California to the North Pacific Coast ranges from 900 to 1400 miles and—

Mr. Johnson: I object to the balance of that page on the ground that it states conclusions on the part of the witness.

Mr. Farrell: I think, Mr. Examiner, that the statement which the witness makes is factual and admissible in this proceeding. This man is an expert witness, traffic manager for one of the large transcontinental railroads involved in this case as a protestant. I think his opinion is of merit and I think he has a right to express it.

Exam. Linn: The witness may continue his statement over the objection.

The objection is overruled.

A. (Reading) The mileage from California to the North Pacific Coast ranges from 900 to 1400 miles and hauls of this length are ideally suited for rail movement. By combining the advantages of rail and Transport Storage and Distributing Company services, we are in the position to provide the very best service to communities not served [fol. 592] by rail and also provide store-door delivery.

[fol. 593] J. E. PETERSON was sworn and testified as follows:

#### Direct examination.

Mr. Cronon: May we mark the exhibits, Mr. Examiner?

Exam. Linn: Yes, beginning with 84.

Mr. Cronon: Exhibit 84 will be the map.

Exhibit 85, a list of stations.

Exhibit 86, the freight train schedule.

Exhibit 87, the performance record.

Exam. Linn: The exhibits may be marked in the manner [fol. 594] indicated.

(Protestant's Exhibits Nos. 84, 85, 86 and 87, Witness Peterson, were marked for identification.)



By Mr. Cronon:

Q. Would you state your name?

A. J. E. Peterson.

Q. What is your business address?

A. 175 East Fourth Street, St. Paul, Minnesota.

Q. By whom are you employed and in what capacity?

A. By the Great Northern Railway, as Staff Assistant to the General Superintendent of Transportation.

Q. What are your duties?

A. My duties consist of preparing exhibits and appearing in Interstate Commerce Commission hearings, and I am in charge of the Time Freight Section of the Transportation Department, which has to do with the performance of time freights, and tracing shipments, diversion of shipments, and so forth.

Q. In other words, your job is to keep tab on freight traffic performance on the Great Northern System?

A. That is right, sir.

Q. You have with you some exhibits, Mr. Peterson. Are they the ones marked 84 to 87 inclusive?

A. Right.

Q. What is Exhibit 84?

A. Exhibit 84 is a map of the United States on which the territory served by the Great Northern Railway is shown in heavy red lines from St. Paul to the West Coast. On [fol. 595] this map I have also circled the principal interchange points for traffic originating in California destined to points in the state of Montana and west.

Q. The Great Northern line in the State of California terminates at Bieber, is that correct?

A. That is right.

Q. And at that point does it connect with another railroad?

A. With the Western Pacific.

Q. On traffic going into the Bay area?

A. Yes, sir.

Q. Does it also have a hook-up with the Western Pacific and the Santa Fe on traffic going into Southern California?

A. It does.

Q. And into the Los Angeles area?

A. Yes.

Q. Which would include the vicinity of the General Motors plants in Southern California?

A. Yes, sir.

Q. What is Exhibit No. 85?

A. Exhibit No. 85 is a list of stations with unloading platforms for unloading autos and trucks in the states of Oregon, Washington, Idaho and Montana.

Q. You don't know whether or not General Motors has dealers at those particular stations?

A. No, I don't.

[fol. 596] Q. If they have they can get their cars unloaded there, however, can't they?

A. Yes, sir.

Q. What is Exhibit No. 86?

A. Exhibit No. 86 shows the freight train schedules on the Atchison, Topeka & Santa Fe Railway, the Western Pacific Railway, and the Great Northern Railway, from Los Angeles and Oakland, California, and on the Great Northern Railway from Portland, Oregon to the principal cities in the states of Oregon, Washington, Idaho and Montana.

Q. The last four states mentioned are those in which the Great Northern is affected by this application?

A. Yes, sir.

Q. Is the purpose of Exhibit 86 to show the so-called published schedules?

A. That is right.

Q. What is Exhibit No. 87?

A. Exhibit No. 87 is the performance record of representative Great Northern freight trains during the period January 1 to 15 inclusive, 1957.

Q. I guess your exhibit is keyed to show what the symbols "A" and "L" mean?

A. Yes.

Q. So it is self-explanatory, I believe.

A. Yes.

[fol. 597] Q. The performance record, Exhibit 87, shows operations on the Great Northern lines only, is that correct?

A. That is right.

Q. Will you tell us, Mr. Peterson, what the over-all on-time performance record of the Great Northern has been for any recent period?

A. Well, we recently checked into this and we have about 93 percent on-time performance.

Q. Does the Great Northern originate any automobile traffic at assembly plants on its line?

A. No, sir.

Q. Does it originate some traffic on ex-Lake shipments at Duluth and Superior?

A. Yes, sir.

Q. During the season of Great Lakes shipping does the Great Northern furnish so-called automobile or Evans loader cars at the head of the Lakes?

A. We do.

Q. If called upon by another railroad is it the practice of the Great Northern to furnish any of its available Evans loader cars for use on other lines?

A. Yes, we do so.

#### OFFERS IN EVIDENCE

Mr. Cronon: I offer Exhibits 84 through 87.

Exam. Linn: They are received.

(Protestant's Exhibits Nos. 84, 85, 86 and 87, Witness Peterson, were received in evidence.)

[fol. 598]. Mr. Cronon: That is all I have on direct.

#### Cross examination.

By Mr. Johnson:

Q. Do I understand that in time of emergency, or car shortages, you do make cars available to assist in the loadings of this character by other railroads?

A. Yes, sir.

Q. Do you assign any cars permanently for the handling of traffic of that character?

A. You mean to other railroads?

Q. Yes.

A. No.

Mr. Johnson: That is all I have.

Mr. Cronon: That is all.

Exam. Linn: That is all. You may be excused.

(Witness excused.)

Mr. Cronon: Mr. VanZinderen, please.

L. L. VAN ZINDEREN was sworn and testified as follows:

Direct examination.

Mr. Cronon: May we have the bound document marked Exhibit No. 88, please?

Exam. Linn: It may be so marked.

(Protestant's Exhibit No. 88, Witness VanZinderen, was marked for identification.)

By Mr. Cronon:

Q. Will you state your name and spell it?

[fol. 599] A. L. L. Van Zinderen—V-a-n-Z-i-n-d-e-r-e-n.

Q. What is your business address?

A. Room 825, Great Northern Building, St. Paul, Minnesota.

Q. By whom are you employed?

A. The Great Northern Railway Company.

Q. In what capacity?

A. Statistician, Cost and Statistical Vice President in the Comptroller's Office.

Q. Did you have prepared under your direction, or partially by yourself, the exhibit which has been marked No. 88 for identification?

A. I did.

[fol. 600] Q. The Schedule "L"?

[fol. 601] A. Schedule "L" shows the cars in tons and the Great Northern revenue from freight and passenger automobiles handled from origins in California and either terminated by the Great Northern or handled by the Great Northern as a bridge carrier in the various states as indicated.

Line 19 shows the total number of cars, and this covers the entire year 1955, 9989 cars, the Great Northern proportion of revenue being \$1,287,308.

Q. Have you made any computation of the percentage that Great Northern revenue on California origins of automobiles bears to gross freight revenue of the Great Northern on passenger automobiles?

A. On passenger automobiles?

Q. Yes.

A. Yes. 38 percent.

Q. Schedule "M" is the time in transit study.

A. It is.

Q. It seems to be similar to the others. Is there anything different about it as far as you know?

A. No, there is not.

#### OFFER IN EVIDENCE

Mr. Cronon: I offer Exhibit 88 in evidence and that completes my direct examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibit 88 for identification is received in evidence.

[fol. 602] Exam. Linn: On the record.

EDWARD W. BERGSTROM was sworn and testified as follows:

Direct examination.

By Mr. Cronon:

Q. Will you state your name?

A. My name is Edward W. Bergstrom.

Q. What is your business address?

A. 175 East Fourth Street, St. Paul, Minnesota.

Q. By whom are you employed?

A. By the Great Northern Railway.

Q. In what capacity?

A. Assistant general freight traffic manager.

[fol. 603] Q. Were you in on discussions with officials of the Great Northern Freight Traffic Department with respect to a proposal whereby Southern Pacific and Great Northern and other railroads were considering filing common carrier applications with the Interstate Commerce Commission, looking forward to performing a joint service, that is, joint service as far as equipment and rates are concerned, on automobile traffic for General Motors from [fol. 604] California origin points, particularly the points on the Great Northern Railway?

A. I was in on such discussion.

Q. Did you understand in those discussions what the particular proposal was?

A. Yes, sir.

Q. Will you give us an answer—

Mr. Johnson: Just a moment. Did you participate in any discussion with Southern Pacific representatives?

The Witness: I participated in discussions with the Great Northern people.

Mr. Johnson: But not with the Southern Pacific?

The Witness: No. My discussion was with our own officer.

Mr. Cronon: I am just asking what the Great Northern proposal was.

By Mr. Cronon:

Q. What was the setup?

A. As I understood, the proposal initially was to join with the Southern Pacific in providing joint motor carrier service under common carrier rates to points served by the Great Northern Railway, the Great Northern to participate in the traffic from its connections with the Southern Pacific.

Q. Did that proposal ever reach any point where the facts were definitely determined as to what was going to be done, or was it more of a preliminary discussion?

A. It was a preliminary discussion. We went so far as [fol. 605] to contemplate methods that could be worked out on an interchange of equipment, interchange of drivers, but before we could conclude anything, it was determined



that General Motors were not interested in a joint operation.

Q. How did you get that information?

A. I was so advised by our vice-president.

Q. Do you know where he got his information?

A. I understand it was by conversations and correspondence with the Southern Pacific.

Q. With a traffic official of like standing of Mr. Finley?

A. Yes.

Q. Who would that be?

A. Mr. Peoples.

Q. Now, why was the Great Northern interested in entering into a joint operation like that when it knew that Pacific Motor Trucking Company was considering filing a contract carrier application which would extend its operations into Great Northern territory? Why were we interested in a joint operation?

A. We were only interested in a joint operation as a means of survival. Obviously if the traffic is going to be taken away from us, we have got to do something to protect ourselves. If we are forced into that type of business, we think our only solution is to join in the operation to protect our revenue. We can't stand that loss of money.

Q. Now, after the so-called joint proposal came to an end [fol. 606] and it was given up for the reasons you have just stated, did the Great Northern, along with other railroads in the North Pacific Coast area, consider and enter into any other trucking arrangements?

A. Yes, we did.

Q. What was that?

A. We worked with a firm called Transport Storage and Distributing Company of Seattle on a proposal to rail automobiles to distributing points; namely, Portland, Seattle, Tacoma, Wenatchee, Spokane, and Kennewick, Washington, with the Transport Company who were then handling the cars from the rail distributing point and making dealer distribution within a short destination radius.

Q. What was the purpose behind the railroads working out an arrangement with Transport Storage?

A. Preservation of revenue; preserve our rail revenue.

[fol. 607]

Cross examination.

By Mr. Johnson:

Q. Mr. Bergstrom, you referred to your opposition in this proceeding as involving a matter of survival to your company. Do you recall that language.

A. Yes, sir.

Q. Now, when you make that statement, I assume you are referring to a loss of money due to potential diversion of traffic; is that right?

A. Yes, sir.

Q. Are you familiar with Exhibit 88 showing the amount of revenue involved?

A. Yes, sir.

[fol. 608] Q. Now, you mentioned in your testimony that it has been your experience from assembly plants in Minnesota and other eastern states that there has been an increase in movement of automobiles in truckaway service?

A. Yes, sir.

Q. What are these assembly plants in Minnesota? Who owns them?

A. The one—there is only one assembly plant in Minnesota. It is owned by Ford Motor Company.

Q. Is Ford Motor Company distributing a great volume?

A. Yes, sir.

Q. Is it generally true, according to your experience and study of this subject, that General Motors competitors have truckaway service available to them and use it?

A. I would say all automobile manufacturers have the service.

Q. And are using it and to an increasing extent; is that right?

[fol. 609] A. Yes, sir. That's why we can't stand this constant erosion of traffic. Some place it's got to stop.

Q. You think it ought to be stopped in California?

A. I thought it should have been stopped before it started, but I think it should be stopped now too.

[fol. 610] Q. Now, on your transport storage plan, when was that application filed?

A. The date the application was filed?

Q. Yes, roughly.

A. I can get that.

[fol. 611] Q. We can move on to something else. Would that have been within the last four or five months?

A. Yes, sir.

Q. That is all I really care about.

A. What do you—here is the date of it. It was October 10, 1956.

Q. Has there been a hearing in that case?

A. Yes, sir. The hearing was concluded in Seattle.

Q. When was it concluded?

A. Held in Seattle on January 28 and 29, 1957; still awaiting a decision.

Q. What is your plan with respect to that operation? Do you contemplate publishing joint rates?

A. Joint rates?

Q. Yes.

A. We probably—we have an application filed right now that is on the joint docket of the North Pacific Coast Freight Bureau on the Pacific South Coast Freight Bureau on Docket No. JT 3694 amended. The date of the docket is January 4, 1957.

Q. Does that contemplate joint rates?

A. Yes, sir; through rate.

Q. From the assembly plant to dealer location?

A. Final destination, yes, sir.

Q. Now, what are you going to do about off rail points?

A. Off rail points?

[fol. 612] Q. Yes.

A. The few off rail points we have could be served by the motor carrier serving the destination area, assuming there is a highway there.

Q. Yes, assuming that, and that is a pretty reasonable assumption.

Now, under that type of arrangement, the traffic would move, let's say, to Seattle?

A. Yes, sir.

Q. By rail, and be unloaded there?

Q. A. Unloaded by the Transport Company, yes, sir.

Q. And then reloaded?

A. On to—

Q. On to the truckaway?

A. Yes, sir.

Q. Have you made any study of transit time?

A. With the operation?

Q. Yes.

A. The transport people tell us that from the distributing points they can make delivery at any destination in the area on the same day that they reload.

[fol. 613] T. R. THOMAS was sworn and testified as follows:

Direct examination.

By Mr. Earp:

Q. Will you state your name, please?

A. T. R. Thomas.

Q. By whom are you employed?

[fol. 614] A. I am employed by the Transport Storage and Distributing Company.

Q. Where is Transport Storage and Distributing Company located?

A. The main office is 74 Jackson, Seattle, Washington.

Q. What is your position?

A. I am general manager at Transport.

Q. Now, can you state what your duties are in your position as general manager of that company?

A. Yes. I am personally accountable to Mr. R. J. Tarte, president, for all phases of the business, including personnel and equipment.

Q. Do your duties include the supervision and handling of all claims, the making of all rates for the company and other matters of that nature?

A. Yes, it does.

Q. Are you generally familiar with the accounts and financial records of that company as well?

A. Yes, I am.

Q. Now, what is the general nature of the business of Transport Storage and Distributing Company?

A. Transport Storage and Distributing Company are terminal operators. We receive on the various auditings of the railroads automobiles in rail shipments. We unload the automobiles and perform—provide warehouse facilities, complete servicing, whatever the dealer may require to [fol. 615] the automobile, from smaller servicing such as making it ready to drive over the roads or for the customer to come in and pick it up himself, or even to the point of undersealing and porcelainizing and polishing and other types of services.

We also receive yard shipments from Transcontinental Truckers from all the various truck lines. Also we receive and duly pick up and process cars coming in import off of the docks. Basically, generally speaking, that is pretty much the scope of our operation.

Q. Do you also perform over-the-road transportation of automobiles and automobile transporter equipment?

A. Yes, we do. We have complete service in the state of Washington from Seattle.

Q. Are you also agent for dealers and others on automobile traffic to Alaska?

A. Yes, I am personal agent for all the General Motors dealers in Alaska.

Q. When was Transport Storage and Distributing Company started? When did they start in business?

A. July 11, 1931.

Q. Have you operated continuously in the ways that you have outlined since that time?

A. Yes.

Q. Is Transport Storage and Distributing Company a corporation?

A. Yes. It is a corporation, a sole owned corporation. [fol. 616] The stock is owned exclusively by Mr. Tarte and his son, Neil.

Mr. Earp: Mr. Examiner, may we mark these for identification, now, please?

**Exam. Linn:** The Operating Authority of Transport Storage and Distributing Company will be marked Exhibit 93, the Intrastate Operating Authority will be marked as 94; the equipment list, 95; and the statement of operations, 96.

(Protestant's Exhibits Nos. 93 through 96, Witness Thomas, were marked for identification.)

**By Mr. Earp:**

**Q.** Do you have in front of you what has been marked for identification as Exhibit No. 93, reading "Operating Authority of Transport Storage and Distributing Company"?

**A.** Yes.

**Q.** Is that a true and correct copy of the interstate commerce certificate of Transport Storage and Distributing Company?

**A.** It is.

**Exam. Linn:** Is there any objection to the exhibits?

**Mr. Johnson:** No objection.

**Exam. Linn:** The exhibits were prepared by you or under your direction?

**The Witness:** That's correct.

**Exam. Linn:** They may be received, counsel, unless the witness desires to comment specially about one of them.

[fol. 617] **Q.** Do you know long Transport Storage and Distributing Company has been so serving the General Motors Corporation?

**A.** Transport Storage and Distributing Company has been serving General Motors for 25 years. In fact, we are very proud of the plaque that we got last year from them.

**Q.** Now, the services that are performed of Buick-Oldsmobile-Pontiac Division, can you state whether or not they are performed under a contract and with whom that contract is negotiated?

**A.** Yes. We do—as I previously stated, we work directly for Buick-Oldsmobile-Pontiac separately, not as an over-all BOP. The contract is negotiated with us yearly by



Argonaut Realty Company, who is the branch of General Motors.

[fol. 618] Q. Are you paid for your services by the Argonaut Realty Company?

A. Yes. We bill Pontiac, Buick and Olds separately. The bills are transmitted to Portland, okayed by the various divisions, forwarded on to Argonaut Realty, and we receive separate checks from Argonaut Realty for each of our charges to the three divisions on a monthly basis.

Q. Do you know how long such arrangements have been in effect?

A. Those arrangements have been in effect, to my personal knowledge, for the last six and a half years that I know of, and I understand for many years prior to my association with Transport Storage.

Q. Does your contract with Argonaut Realty call for any minimum number of cars for which you must provide warehouse service?

A. Yes. We must provide a minimum in our contract for space for 100 either Buick, Olds or Pontiac, or any combination of numbers thereby.

Q. Can you state, Mr. Thomas, based on your experience, the number of cars that you usually have in storage per Buick-Cadillac-Pontiac Division?

A. Yes. It varies with the year, the way the rest of production of automobile has done. The high, I would say, would be 300 Buick, Olds and Pontiacs, and the low would be 25 of each, which would be—we have never—very seldom less than 75 in the warehouse; 75 to—oh, possibly it might [fol. 619] go once or twice to 60. But normally speaking it is usually around 150 to 200.

Q. Now, can you state the number of cars that were received, handled by Transport Storage and Distributing Company for the years 1950 through 1956?

A. Yes. Do you want the number of all makes?

Q. All makes, yes.

A. 1950 was 27 thousand 10 hundred—correction, 27,919; '51 was 22,894. '52 was 17,103. '53 was 18,217. '54 was 12,860. '55 was 22,861. '56 was 17,580.

Q. Now, can you state the number of cars shipped to dealers in Alaska for the years 1952 through 1956 inclusive?

A. Yes. 1952 was 2,022. '53 was 1,808. '54 was 1,399; '55 was 1,954. '56 was 1,958.

Q. Now, Mr. Thomas, can you state the number of automobiles received by Transport Storage and Distributing Company handled by you for the years 1955 and 1956? I am talking about automobiles handled by rail, that came to you by rail.

A. Yes. In 1955 we handled 22,027 received exclusively by rail. In 1956 it was 15,039 by rail.

Q. Can you state the number of cars handled for those years from truck transporters?

A. Yes. In 1955 we received via truck transporters 659; in 1956, 1,765.

Q. Can you state the number of cars received for those years via steamship?

[fol. 620] A. In 1955 we received via steamship 175; in 1956, 1,756.

Q. In your years of experience with this company, Mr. Thomas, have you and do you today actually go down on the team tracks and supervise and work in the unloading of automobiles from rail cars?

A. Yes, I do.

Q. Based on that experience can you state what average time it requires for you to unload rail cars, for automobiles and rail cars?

A. Yes, sir. Depending on the make of car, they will run anywhere from 14 minutes up to 30 and 35 minutes.

Q. Do you also receive shipments at your terminals that come there by truck transporters?

A. Yes, we do.

Q. Have you had occasion to observe the transporter drivers unload their rigs with their cars?

A. Yes.

Q. Has that been frequent?

A. Yes. We have received daily shipments, and I spend a minimum of at least an hour and a half to two hours on our auditing personally.

Q. I am talking about the truck transporters now.

A. I understand. I am there when they come in.

Q. Based on that experience can you state what the length of time required to unload these truck transports is?

[fol. 621] A. Yes. It all depends, of course, on the type of equipment. With some of the longhaul carrier, hauling six units in a combination, it takes him usually a little bit longer than the—we do receive short haul movements from other companies in Seattle, trucking companies such as Convoy and that. They take much less time to unload; about the same time as ours.

The longhaul carriers will run from the time the cars are checked and unloaded and the driver has a signed receipt to go back, the run is—well, it will run a good hour and many times an hour and a half.

Q. Now, can you state, Mr. Thomas, if Transport Storage and Distributing Company has filed an application for an extension of services and authority with the Interstate Commerce Commission?

A. Yes, we have.

Q. Is that docketed as MC 108121, Sub No. 2?

A. It is.

Q. Was that matter heard in Seattle on January 28, and has the hearing been concluded?

A. Yes, the hearing has been concluded.

Mr. Earp: Mr. Examiner, I would request judicial notice be taken of the application of Transport Storage and Distributing Company.

Mr. Johnson: I would object to that. I don't think that is a proper subject of judicial notice.

Exam. Linn: Will it be satisfactory if the Commission [fol. 622] officially notices the decision that may be reached in that proceeding?

Mr. Earp: Yes, sir.

Exam. Linn: Ordinarily that is done as a matter of course, and it may be understood it will be done in this proceeding.

By Mr. Earp:

Q. Mr. Thomas, can you state briefly the authority that you sought in this application?

A. Yes. We applied for secondary rights only from seven—I believe it is seven from different terminals. I can name the terminals.

Q. Pardon me, they were the same terminals as named by Mr. Bergstrom in his earlier testimony?

A. Yes.

Q. And does the territory you contemplate serving include northern and eastern Oregon, all of the state of Washington, northern and western Idaho, and four counties in eastern Montana? Is that correct?

A. Yes, it does.

Q. Who supported your application at the hearing, Mr. Thomas?

A. We had three northern railroads: the Great Northern, the Northern Pacific and the Union Pacific, and the many dealers that we serve.

Q. Now, could you explain briefly the type of service that is contemplated by your company if the application is granted?

A. Yes. We have set up—

[fol. 623] Exam. Linn: I wonder if that isn't sufficient, that the decision ultimately issued be officially noticed.

Mr. Earp: Well, Mr. Examiner, we have a situation here in which this applicant, in order to remain in business, is attempting and trying his best to provide a service which the dealers want and need.

Mr. Handler: Do you mean applicant or protestant, counsel?

Mr. Earp: I beg your pardon?

Mr. Handler: You said "applicant." Do you mean "applicant" or "protestant"?

Mr. Earp: Which this protestant—yes. I beg your pardon. Thank you, Mr. Handler. —(continuing) which this protestant is doing in order to protect their business.

Exam. Linn: Will the witness go ahead briefly on the subject.

Mr. Earp: I think it is important because I think we can show here—

Exam. Linn: It is not important unless the Commission grants it. Then it may become important.

The Witness: Yes. We have set up the seven different terminals, and we never have our trucks more than 150 miles from one terminal point. This is predicated on re-

ceiving the cars to a one destination point, either by rail or truck or both.

Then the product is put on our truck and re-fanned out in load combinations to the various dealers, in effect giving [fol. 624] the so-called—what we refer to in the business as the door to door delivery program.

Exam. Linn: That service would be rendered to both rail and non-rail points?

The Witness: Yes. We service the general public, the whole works.

By Mr. Earp:

Q. Now, Mr. Thomas, have you participated in conferences with officials of the Great Northern, the Northern Pacific and the Union Pacific railroads regarding operations under either joint rate arrangements or as substituted service arrangements with these railroads if your application is granted?

A. Yes.

Q. Will you also serve the off-rail points?

A. We serve all points.

Q. Are you willing to work on either a combination of local rates independently or under either a joint or substituted arrangement?

A. Yes, no question about it. We just want to give the service to the dealers.

Q. Can you state what your transit times will be on these automobiles received by you after the car is spotted?

A. We—the cars received with us by noon, within the 24 hour period we will have the car delivered to the dealer's door. That is one of the main things that made us decide to limit our operation for never being more than 150 miles from one point, to send the truck out one morning and bring it back the same day.

[fol. 625] Q. Do you believe that that contributes to the overall efficiency of a truck operation?

A. I do in our particular case up there, yes.

Q. Now, Mr. Thomas, you have had a great deal of experience in receiving shipments of automobiles via rail from California, have you not?



A. Yes.

Q. Have you had occasion to observe the shipping time on the waybills of those automobiles?

A. Yes; we have more than the waybills. We, for example—

Exam. Linn: Isn't it already established by the rails themselves?

Mr. Earp: Mr. Examiner, I want to point out from this witness that, in his experience, the rails are actually making their advertised scheduled time here.

Exam. Linn: There is no question about the rail transit time as far as the record goes. It is adequately established.

Mr. Earp: All right, sir.

[fol. 626] Q. Based on the studies that you have made of this transportation problem prior to the filing of your application, can you state briefly the advantages that you believe are inherent in the Transport Storage and Distributing plan of distributing cars after a prior rail or truckaway movement versus other methods, Mr. Thomas?

Mr. Johnson: It seems to me that is a conclusion and is argumentative. I object on that ground.

Mr. Earp: Well, this witness has made a thorough study of this matter, Mr. Examiner.

Exam. Linn: Is there anything he hasn't said about it?

Mr. Earp: Yes, sir, there is.

Exam. Linn: I wonder if you could develop it by a specific question.

Mr. Earp: All right.

By Mr. Earp:

Q. Now, Mr. Thomas, you stated here briefly before that you perform pre-servicing of automobiles for some dealers and some fleet uses, did you not?

A. Yes.

Q. Will you state what that pre-servicing includes?

A. Yes. We have—

Exam. Linn: Haven't you already stated that, Witness?

Mr. Earp: No.



[fol. 627] The Witness: No. Just one point, if I can. I won't repeat what I have said before.

In fleet contracts—and I am speaking specifically now of Chevrolet—the Chevrolet dealers in our particular area, we have taken to the—as far as taken the unit from the box car to the complete servicing and all accessories that are to be installed and required and delivered right to their customer without that ever having the waste motion of unloading and taking it to their place and back. This was done upon the request of the Chevrolet on us ourselves, this additional service that we perform for them.

By Mr. Earp:

Q. Do you also perform this pre-servicing for dealers in your area now?

A. Yes. We are doing it to the four Buick dealers, the undersealing and porcelainizing and polishing and the complete get-ready, with the exception of mechanical.

Q. Based on your experience in this automobile transportation field, Mr. Thomas, is it your opinion—will you state whether or not it is your opinion that your plan is the only plan that will allow such pre-servicing of automobiles for dealers?

A. Yes. I believe in our area up there that that is the only way it will work.

Q. Now, Mr. Thomas, can you state whether or not in December of 1956 you had conferences with Mr. Lynch of Chevrolet and Mr. Barrett of the Buick-Oldsmobile-Pontiac [fol. 628] assembly division respecting your application and the services contemplated by you?

A. Yes. Mr. Tarte and myself both called them personally.

[fol. 629] Q. Now, Mr. Thomas, do you serve dealers selling other makes of automobiles besides General Motors?

A. Yes, we do.

Q. Can you state what makes of cars you service?

A. We service all makes of cars, other than the Ford product.

Q. That includes Chrysler and Nash and Studebaker, does it not?

A. That's correct, all those manufacturers, plus the foreign cars.

[fol. 630] Q. Were you present in the hearing room and did you hear the testimony of the witnesses for this applicant and the witnesses for the General Motors Corporation, intervenor in support?

A. I have.

Q. Now, Mr. Thomas, will you please state what will be the effect on Transport Storage and Distributing Company if this application is granted and if the General Motors automobiles are diverted to Pacific Motor Trucking Company as the General Motors witnesses testified they would be?

A. Yes. Mr. Tarte and I have gone into this at some length when the PMT application came up, and we feel that should this application be granted and we lose the 65 per cent of our total traffic, it would not be economically feasible for us to maintain any facilities of the nature that we have now and, in effect, we would have to—well, we would be pretty much forced to shut her down.

Q. Does that mean also that your services to General Motors dealers in Alaska and to the Buick-Oldsmobile-Pontiac Division for Alaska shipments would also no longer be available?

A. Yes. We wouldn't have any facilities.

Mr. Earp: I believe that is all, Mr. Examiner.

#### OFFERS IN EVIDENCE

I will offer Exhibits 93 through 97.

[fol. 631] Cross examination.

[fol. 632] By Mr. Johnson:

Q. Now, on the truckaway movements into your facilities, those are largely transcontinental trucking movements, aren't they?

[fol. 633] A. You mean the actual unit that comes to us or whatever is originated?

Q. Yes. Where do most of them originate?

A. Most of them come out of Kenosha and out of points in east Kansas City, so on.

Q. And move all the way by truckaway?

A. Yes, by truck.

Q. That might very well explain the condition of dirt arriving, mightn't it?

A. Oh, yes, it does. We don't have that when we receive them by rail out of Detroit, though.

Q. How do you suppose they are moved all the way, by truck?

A. We are not in the trucking business. I am not qualified to answer that. We are not particularly interested in getting it, either.

[fol. 634]

AFTERNOON SESSION

1:50 p. m.

#### COLLOQUY

Exam. Linn: The hearing will be in order.

Mr. Handler: Mr. Examiner, I wish to apologize for delaying the resumption of the proceedings. It was due to my receipt of a telephone call from Detroit advising that the National Automobile Transporters Association, which was represented here through last Thursday by Mr. Bieneman, did have some evidence which it wished to offer. Mr. Johnson very cooperatively talked to Mr. Bieneman and, as I understand the arrangement now, it is that Mr. Bieneman will submit to Mr. Johnson a proposal position of the Association, which will be submitted then to the Commission, subject to whatever objection as to materiality Mr. Johnson may wish to make. But the exhibits and the opening statement will go forward to the Commission in the form in which they are submitted by Mr. Bieneman in line with the agreement he and Mr. Johnson entered into.

That can be done at any reasonable time the Examiner may establish, corresponding to the time for the submission of the exhibit by Mr. Smith. That will then remove the request of the Association for further hearing. Mr. Bieneman will submit a brief, if briefs are requested by the applicant, in support of the position of the NATA.

Mr. Johnson: That covers the situation satisfactorily. I, as Mr. Handler indicated, tried to accommodate myself to Mr. Bieneman, because of his absence, in trying to work [fol. 635] out the stipulation procedure. Of course, I am in a way proceeding without full knowledge of what will be in it, and I would reserve any right I might have if there is something in it that goes beyond the scope of our discussion.

Mr. Handler: I understand that. I don't think there will be.

Exam. Linn: The parties should, before the conclusion of the hearing today, set forth in specific terms exactly what additional matter is to come as a late filed exhibit or what stipulations are to be entered into at a time subsequent to the close of the hearing. As the matter now stands, the record is so general that it is possible to submit perhaps something that may possibly go beyond the intent of the parties.

Mr. Johnson: Well, I think that with respect to Mr. Bieneman, I can state my understanding of what he wants.

Exam. Linn: I would suggest you do it by a specific statement at some later point today, perhaps after the conclusion of the protestant's case.

Mr. Johnson: Very well, sir.

Exam. Linn: If the protestants are ready will they call the next witness?

Mr. Jacobson: I will call Mr. Lee.

Mr. Examiner, I have submitted a series of exhibits. May they be marked for identification?

Exam. Linn: The Certificate of Robertson Truck-A-Ways [fol. 636] is marked Exhibit 98; equipment list of Robertson, 99.

Mr. Jacobson: Truck and trailers is 99 then.

Exam. Linn: The map of automobiles and trucks initial authority is 100; map of trucks in secondary is 101; balance sheet of Robertson is 102; initial traffic from Los Angeles, 103; shipments from Van Nuys, 104.

(Protestant's Exhibits Nos. 98 through 104, Witness Lee, were marked for identification.)

Mr. Johnson: Mr. Examiner, may I ask counsel a question?

Exam. Linn: Yes.

Mr. Johnson: We only have one set of these exhibits, and we are under obligation to provide Mr. Frizzell with a set: Do you have two more?

Mr. Jacobson: This is the last.

DAVID M. LEE was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name.

A. David M. Lee.

Q. Your address, Mr. Lee?

A. 7101 East Slauson Avenue, Los Angeles.

Q. You are employed by Robertson Truck-A-Ways?

A. Yes, sir.

Q. In what capacity?

A. Vice-president and general manager.

[fol. 637] Q. Where is the principal place of business of Robertson Truck-A-Ways?

A. Los Angeles.

Q. What address?

A. 7101 East Slauson Avenue.

Q. What business is Robertson Truck-A-Ways engaged in?

A. In the transportation of motor vehicles.

Q. At what address does Robertson Truck-A-Ways have their principal place of business?

A. At 7101 East Slauson Avenue, Los Angeles.

Q. At that location what property or facilities do they have?

A. They own eight acres of land that is fenced, lighted, surfaced, with offices, adequate shops, docks, for unloading and loading trailers; personnel for the maintenance of the equipment and office personnel; oil and gasoline facilities.

Q. At what other locations in California does Robertson Truck-A-Ways have terminal facilities or facilities?

A. In San Leandro, California.



Q. And San Leandro is adjacent to Oakland?

A. Yes, it is.

Q. At San Leandro at the present time, what facilities do they have there?

A. We have a yard fenced, with office personnel, yard surfaced, and lighted.

Q. I refer you to Exhibit No. 98 for identification. Does [fol. 638] that depict the operative rights or authority of Robertson Truck-A-Ways, with the exception of any pending recommended order?

A. Yes, it does.

Q. I refer you next to Exhibit 99, consisting of six pages. Does that depict the motor vehicles owned and operated by Robertson Truck-A-Ways in the conduct of business?

A. Yes, it does.

Q. Are all of these units adaptable to the transportation of motor vehicles?

A. Yes, they are.

Q. Are they, other than the tractors or trailers, all specially designed trailers for the transportation of motor vehicles?

A. Yes, they are.

Q. Generally speaking are they all of a similar class, with the exception of the capacity?

A. Yes, they are.

Q. As a matter of fact, are they the same type of—are you familiar with the type of vehicle utilized by other automobile carriers?

A. Yes.

Q. Is your equipment materially different from the equipment operated by the applicant and other carriers engaged in this business?

A. No, I would say not.

[fol. 639] Q. Approximately how many years has Robertson Truck-A-Ways been engaged in transportation of automobiles in the Southwest?

A. About 28 years.

Q. How long have you been engaged with Robertson Truck-A-Ways in the conduct of this business?

A. Six years.



Q. And in your capacity as general manager do you have supervision and direction of the overall operation?

A. Yes, I do.

Q. As such are you familiar with the overall operation?

A. I am.

Q. Does your company with regularity render a service between the points you are authorized to serve?

A. Yes, sir, we do.

Q. And does that service consist quite extensively of a daily service to the adjoining states?

A. Yes.

Q. What facilities, if any, do you have in adjoining states?

A. We operate a terminal in Phoenix, Arizona, with personnel, in a suitable yard that is fenced, surfaced and lighted, with servicing facilities, gasoline and oil.

Q. Do you maintain there help too?

A. Yes, we do.

Q. Your company operates as a common carrier, does it not?

A. Yes, sir.

[fol. 640] Q. Do you seek and serve any customers that desire your service?

A. Yes, we do.

Q. What is your principal product that you transport?

A. Automobiles.

Q. For what company?

A. The major percentage of our business is with Chrysler Corporation.

Q. Do you likewise transport other types of automobiles?

A. Yes, we do.

Q. Have you transported Chevrolets?

A. We have.

Q. From the Raymer plant to points in California and elsewhere in the adjoining states?

A. Yes, we have.

Q. Have you likewise transported automobiles out of the South Gate plant of BOP?

A. On occasion, yes, sir.

Q. Is your equipment adapted to the transportation of products that move out of the BOP plant?

A. Yes. Our equipment is automobile transporting equipment that will haul automobiles.

Q. In that connection have you had experience in moving pilot models out of the BOP plant?

A. Not out of the BOP plant, but pilot models with show cars, as they are called, for the zone offices of General Motors BOP.

[fol. 641] Q. And those are the various new model cars that are produced or manufactured in the BOP plant; is that correct?

A. Will you say that again?

(Question read.)

The Witness: They are like models, yes, sir.

By Mr. Jacobson:

Q. Have you had any difficulty, equipment-wise, in the movement of various General Motors products offered to you for transportation?

A. No, sir, we have not.

Q. Now, your Exhibit No. 100 depicts what?

A. That is a map showing the authority of Robertson Truck-A-Ways initial authority covering automobiles and trucks from Los Angeles to the states of California, Oregon and Nevada and Arizona.

Q. Under that authority could you transport vehicles from the BOP plant in South Gate and the Raymer plant to the various states shown on this exhibit?

A. Yes. Our authority includes South Gate and Van Nuys and Raymer.

Q. Is your company ready, able and willing to transport those products for General Motors?

A. We certainly are.

Q. Have you sought that business by solicitation?

A. Yes.

Q. Do you solicit with any degree of frequency?

[fol. 642] A. Yes, sir.

Q. Do you desire to transport those vehicles for the company?

A. Very much.

Q. By the way, do you have facilities to transport those vehicles?

A. Yes, sir.

Q. Is your company financially able to acquire such additional facilities that may be necessary to accommodate the traffic of General Motors to the points you are authorized to serve?

Mr. Johnson: I object to that as being leading and calling for a conclusion of the witness, and no proper foundation has been laid.

Exam. Linn: The witness may answer.

The Witness: I think we do, sir. If we had General Motors traffic, I don't think we would have any trouble getting equipment.

By Mr. Jacobson:

Q. Well, will your company secure the necessary equipment to transport it if you are deficient at the present time if any or all or any part of the traffic is offered to you?

A. We would be very happy to.

Q. I next refer you to Exhibit No. 101 and ask you what that depicts.

A. It depicts the authority of Robertson Truck-A-Ways covering the transportation of trucks by truckaway in [fol. 643] secondary movement from points within 20 miles of San Leandro to the 11 western states.

Q. Are you familiar with the books and records of Robertson Truck-A-Ways?

A. I am.

Q. I show you Exhibit No. 102 for identification. Does that truly reflect the condition of the books and records of your company as of that date?

A. Yes, it does.

Q. I show you Exhibit No. 103. What is the purpose of that exhibit, Mr. Lee?

A. This is a summation of traffic, initial traffic from Los Angeles to the states of Arizona, Nevada and Oregon for the year 1956 and two months of 1957.

Q. And that covers the territory for which you have operating rights under your Exhibit No. 100 from the Los Angeles area; is that correct?

A. Yes, sir.

Q. I notice that the volume of traffic into Oregon is spasmodic. Is there any reason for that?

A. Well, traffic that moves by Robertson doesn't move by any other carrier, and traffic that would move by other means we wouldn't know about.

Q. Well, what other means of transportation, to your knowledge, is there? Is there any other means of trans-  
[fol. 644] portation by motor truck or truckaway from the Los Angeles area to Oregon?

A. No, sir.

Q. To your knowledge, does traffic move from Los Angeles to Oregon throughout the entire year?

Mr. Johnson: No proper foundation has been laid for that. All these questions are leading and suggestive.

Exam. Linn: Well, if the witness knows he may tell us how he knows.

By Mr. Jacobson:

Q. Are you familiar with the movement of traffic from Los Angeles to Oregon of automobiles?

A. Yes, sir.

Mr. Johnson: How did he acquire this knowledge?

By Mr. Jacobson:

Q. How did you acquire this knowledge, Mr. Lee?

A. My knowledge came through the traffic department of Chrysler Corporation.

Q. Are you constantly in contact with the Chrysler Corporation traffic department?

A. Yes, we are.

Mr. Johnson: I am going to object to this. The foundation shows his knowledge is based upon discussions with other parties who are not here. It is obviously hearsay.

Exam. Linn: I don't believe there is a pending question. Will you go ahead?

Mr. Jacobson: Sir?

[fol. 645] Exam. Linn: I don't believe there is a pending question. Will you go ahead?

Mr. Jacobson: I think I started one.

(Record read.)

By Mr. Jacobson:

Q. Are you familiar, Mr. Lee, with the comparison of rates of your published rates—rather with the rail-rates into the Oregon territory from the Los Angeles area?

A. Yes, I am familiar.

Q. Do you know of your own knowledge whether traffic moves from the Los Angeles area to Oregon via rail?

A. Yes. There is some movement by rail.

Q. During the months of May, June, July and through December, to your knowledge did traffic move from the Chrysler points to points in Oregon via rail?

A. Yes, it did.

Q. Did you enjoy any traffic during the period of time to Oregon by truckaway?

A. No, we did not.

Q. Approximately what percentage of your truck rate is the rail rate to Oregon from Los Angeles?

A. What percentage?

Q. Yes.

The Witness: Will you read that question again, please?

(Question read.)

Mr. Jacobson: By comparison.

[fol. 646] Mr. Johnson: I object to that as incompetent, irrelevant and immaterial.

Exam. Linn: The witness may state whether the truck rate is higher or lower than the rail rate.

The Witness: The truck rate is higher than the rail rate.

By Mr. Jacobson:

Q. Have you solicited the business of General Motors in the State of California from their Los Angeles plants?

A. Yes, we have.

Q. Have you been able to secure any of it other than the few hauls you have had out of BOP and those shown by Exhibit 104?

A. No.

Q. Were you given any reason why you couldn't get the business?

A. Our solicitation results were that they were aware of our service and have copies of our tariff; should they be able to use us, why, they would, in some cases, the inference, of course, is to meeting competition rates or rail rates.

Q. In connection with your Exhibit 104, those movements that you show, where did those shipments originate?

A. They originate at the Raymer plant of Chevrolet, Van Nuys.

Q. Destined to the points shown on the exhibit?

A. Yes, sir.

Q. Was this business given to you by General Motors or somebody else?

A. These are moved on a government bill of lading.

Q. I note on January 8, 1957, you moved one vehicle to [fol. 647] Camp Mercury, Nevada.

A. Yes, sir.

Q. How did you secure that business?

A. That business was given to us apparently of a main unit destined for Camp Mercury, Nevada.

Q. Just prior to that date, in the latter part of December, were you in communication with the Chevrolet plant at Raymer, California?

A. Yes, sir.

Q. Under what circumstances?

A. We were called on for information that we would be able to handle a shipment of vehicles from the plant over to Camp Mercury, Nevada.

Q. Were you told how many?

A. It would be in excess of 100.

Q. What happened?

A. Nothing happened. Two days went by, and we contacted the—

Q. Did you tell them you could handle them?

A. Oh, yes; yes, we did.



Q. What happened then?

A. Well, we didn't get the movement.

Q. Do you know who moved them?

A. Yes, sir.

Q. Who moved them?

A. PMT.

[fol. 648] Q. How do you know they moved them?

A. I was so advised.

Q. Did you have any communication in connection with this movement with the Government?

A. Yes.

Q. With whom?

A. General Service Administration of Washington, D.C.

Q. And did they tell you why you didn't get the movement?

A. They understood that we had refused the movement in a telephone conversation with Mr. Egan.

Q. Did you ever refuse to move these vehicles?

A. We never did.

Q. And out of the entire group how many did you move?

A. We moved one.

Q. And that was on or about the 5th of the month?

A. Yes, sir.

Q. Do you know of your own knowledge how the others moved?

A. Yes, sir.

Q. How?

A. They moved partly by rail, and the majority of them moved by PMT motor truck.

Q. Those that moved by rail, where did they move to?

A. They were moved to Las Vegas, Nevada.

Q. Do you know how they moved from Las Vegas, by what authority or by whom they were moved from Las Vegas to Mercury, Nevada?

[fol. 649] Mr. Johnson: I have an objection to that.

Mr. Jacobson: If he knows.

Mr. Johnson: I withdraw my objection.

The Witness: I understand the move was completed—

Mr. Johnson: If he knows.

By Mr. Jacobson:

Q. Do you know of your own knowledge?

A. Yes.

Mr. Johnson: May I have the answer read?

(Record read.)

By Mr. Jacobson:

Q. Do you know of your own knowledge how they moved from Las Vegas to Camp Mercury, Nevada, or by what authority?

A. I was advised the authority was granted to PMT to make the move.

Mr. Johnson: Is the witness talking about the shipment from Las Vegas, counsel?

Exam. Linn: That is the way I understand it.

By Mr. Jacobson:

Q. Does your company have on file with the Commission a tariff covering the entire operation?

A. Yes, sir.

Q. Do you perform split deliveries?

A. Yes, sir.

Q. Through your entire territory?

A. Yes, sir.

Q. If the traffic of General Motors or any part thereof [fol. 650] is offered to you, would you be willing to transport it on your tariff in accordance with the authority you have?

A. Yes, sir.

Q. Now, Mr. Lee, does your company maintain a safety program?

A. Yes, it does.

Q. Tell us generally what it consists of.

A. We have a full time safety director charged with the responsibility of the safety operation of our operations. The personnel director works very closely with him, holding regular safety meetings, advising the boys in groups, small groups, as well as general meetings, of regulations

and advises as to the safety of operation. We have regular engineering service on the highway that makes between two and four hundred reports to us a month on the observation of our equipment on road.

Q. Have you in the past transported any motor vehicles from the South Gate plant of General Motors to any point or place in the State of Arizona?

A. Yes, we did.

Q. And what type of vehicles were those?

A. They were Oldsmobile automobiles.

Q. Did you transport them on your regular equipment?

A. Yes, sir.

Q. And where did you receive them from the General Motors Company with respect to their property in South Gate?

A. Well, it was in South Gate, the property that adjoins [fol. 651] the PMT portion of the yard.

Q. Who moved the cars from the delivery gate to the highway where they were given to you, do you know?

A. The factory.

Q. But you didn't receive them on the property of the PMT or the property of General Motors?

A. Well, it was General Motors property, I would say, but not used by PMT.

Q. That wasn't a Government movement, was it?

A. No, sir.

Q. Now, in connection with the movements off the Raymer property, did you go on the property of the General Motors to pick them up?

A. Yes, sir.

Q. How did you get to the point where you picked them up on General Motors property?

A. Well, they have a driveway that is accessible to our trucks. The units were given to us right there where we could load them.

Q. Did you have any difficulty in going over this driveway or loading on the property or getting off the property with the load?

A. No, we had none.

Q. Does your company, in the regular course of its busi-

ness, interchange with other carriers to perform a through operation?

A. Yes, sir.

[fol. 652] Q. Would your company, if traffic were available from the General Motors plant, interline with lawful carriers to effect a through delivery to destination points that you might not be authorized to serve under your rights, or they might not be authorized to serve that could serve in conjunction with you?

A. Yes, sir. We would have to work with anyone.

Mr. Jacobson: I offer the exhibits in evidence.

Mr. Johnson: No objection to the exhibits.

Exam. Linn: Exhibits 98 through 104 inclusive are received in evidence.

(Protestant's Exhibits Nos. 98 through 104, Witness Lee, were received in evidence.)

Cross examination.

By Mr. Johnson:

Q. Mr. Lee, you have no operating authority whatsoever from Oakland, California; is that right?

A. Sir?

Q. You have no operating authority at all from Oakland, California?

A. Yes, we have some operating authority from Oakland. From Oakland did you say?

Q. Yes.

A. As a point within 20 miles of San Leandro in secondary by truckaway trucks, we can serve that area.

Q. In secondary movement only?

A. Yes.

[fol. 653] Q. You are not authorized to handle new automobiles, trucks or buses in initial movement from Oakland, are you?

A. By truckaway?

Q. By truckaway or driveaway.

A. Robertson Company is not.

Q. That is the company you are testifying for today, isn't it?

A. Yes.

Q. Now, with respect to South Gate, do you have authority to transport new automobiles, trucks and buses in initial movements from the General Motors plant there? Are you authorized under your authority to enter the plant facilities and accept delivery of new automobiles, trucks and buses?

A. Our authority covers South Gate, California, and we can operate from South Gate.

Q. Well, now, isn't there some question that you have had with the Interstate Commerce Commission as to the exact scope of your authority, and more particularly your right to actually serve or accept deliveries of these units at that plant?

A. I talked to the district supervisor in Los Angeles.

Q. Didn't you get a letter from him?

A. I did.

Q. Now, I hand you a letter dated July 3, 1956, which is addressed to your attention. It is from the district supervisor. Is that a true copy of the letter which you received?

A. I think it is, yes, sir.

[fol. 654] Mr. Johnson: May I offer that for identification?

Exam. Linn: Exhibit 105.

(Applicant's Exhibit No. 105, Witness Lee, was marked for identification.)

By Mr. Johnson:

Q. Isn't it a fact that you don't have authority—

Mr. Jacobson: Just a minute. Before you ask that question—

Exam. Linn: Will you complete your question, Mr. Johnson?

#### OFFER IN EVIDENCE

Mr. Johnson: I will withdraw the question and simply offer the exhibit, which speaks for itself.

Mr. Jacobson: Just a moment, please. I will have no objection to the letter going in.

Exam. Linn: Exhibit 105 for identification is received in evidence.

(Applicant's Exhibit No. 105, Witness Lee, was received in evidence.)

By Mr. Johnson:

Q. Now, to the extent that you do have authority with respect to South Gate and with respect to Raymer, you are only authorized to serve Arizona, Nevada and Oregon in initial movements?

A. Yes, sir, and California.

Q. Now, with respect to the shipments you say you handled from the Raymer plant, excluding those moving under government billing, can you give us the dates of those shipments and the volume in the year 1956? Let's take the [fol. 655] Raymer plant first. How many units did you transport for General Motors in which General Motors actually paid the freight from Raymer in 1956?

A. I don't recall any.

Q. What is the situation with respect to South Gate for the year 1956?

A. One load, I think, of three automobiles to Phoenix, Arizona. That movement took place in June the 25th, 1956 for delivery to Phoenix, Arizona.

Q. And that was three units, three automobiles, three vehicles?

A. Three Oldsmobiles.

Q. What other movements did you have in the year 1956?

A. I don't recall any other movement for the BOP plant in 1956.

Q. You don't recall any other movement in which BOP requested you transport its products at rates or charges paid by it?

A. No, sir, I do not.

Q. Now, with respect to this movement from Las Vegas to Camp Mercury, as I understand your testimony, you were advised by the Interstate Commerce Commission that that movement was made by PMT?

A. My advice from the Commission's office was that temporary authority had been granted to PMT, and they completed the movement.



Q. From Las Vegas?

A. Which included Las Vegas to Camp Mercury as well as from Raymer to Camp Mercury.

[fol. 656] Q. Was that information given to you in writing?

A. Sir?

Q. Was that information given—

A. It was given to me over the telephone.

Q. Who gave it to you?

A. It came from the San Francisco office of the Interstate Commerce Commission.

Q. Are you sure that did not refer to the movement from the Raymer plan to Camp Mercury?

A. Well, his wording to me was that the movement had been completed on temporary authority.

Q. And that temporary authority covered a movement from Raymer to Camp Mercury, didn't it?

A. Yes. My knowledge of the situation was that there was 35 units already in Las Vegas, and the question was put to us whether we could move them or not.

Q. Which moved by rail?

A. Yes, sir.

Q. You don't actually know how those units were delivered from Las Vegas?

A. I didn't see them moved, no, sir.

Q. You don't actually know how they were moved from Las Vegas to Camp Mercury?

Mr. Jacobson: He said he didn't see them moved. I assume you will show us how they were moved.

[fol. 657] Mr. Johnson: I haven't any idea. We didn't do it.

By Mr. Johnson:

Q. Now, with respect to your common carrier service in transportation of new automobiles, trucks and buses in initial movements, you have only served Chrysler; is that correct?

A. We serve anybody within the scope of our authority.

Q. I mean within the scope of your authority.

A. Yes, sir.

Q. Chrysler is the only manufacturer that you serve in initial movement?

A. No.

Q. Who else do you serve? I am talking now solely about initial movement of new automobiles, trucks and buses.

Let's take the year 1956. As a common carrier did you transport new automobiles, trucks and buses in initial movement for anyone other than Chrysler, excepting these isolated shipments that we have just been talking about?

A. Including the government shipments, our movements on a government bill of lading?

Q. Excluding them.

A. No, I don't know of any other.

Mr. Jacobson: You are talking about initial movements?

The Witness: Yes.

By Mr. Johnson:

Q. So far as initial movement is concerned, your operations are actually confined to Chrysler?

[fol. 658] A. Not confined, but that's our volume of business, yes.

Q. That is the way it works out?

A. Yes.

Q. Now, do you assign equipment to the Chrysler plant?

A. Specific equipment?

Q. Yes.

A. Well, our operation is to take care of whatever need arises.

Q. But it is made available at all times to meet Chrysler's needs, isn't it?

A. Well, yes.

Q. Now, where is the storage yard that you have in Los Angeles with relation to Chrysler plant?

A. At 7101 East Slauson.

Q. How far is that from the Chrysler plant?

A. I guess about six blocks.

Q. How far is it from the Raymer plant?

A. From what?

Q. Raymer?

A. I don't know how far that is.

Q. Well, is it roughly five miles, ten miles, fifteen, twenty?

A. I don't know.

Q. How far is it from the South Gate plant?

A. I would say within four or five miles.

Q. In soliciting the General Motors business at these two plants, if you had gotten it, would it be your intention to [fol. 659] use that storage yard?

A. If it were needed we might be able to work something out like PMT on part of the yard.

Q. If you couldn't, then you would plan to use that storage yard?

A. Whatever was needed. We would get whatever was necessary to accommodate the need.

Q. But you haven't really studied the situation sufficiently to know precisely whether you would use that storage yard or some other facilities, have you?

A. Yes, we have. We have made investigations on property available close to both plants.

Q. Yet you don't know how far your storage yard is from the South Gate plant?

A. No. Our interest then would be to be as close to the plant for the need as we could get.

Q. So, if necessary, you would acquire new storage facilities?

A. Yes, we would.

Q. I gather that in your solicitation of the two plants down there you were advised that the existing carrier, namely PMT, was rendering a satisfactory service?

A. Well, our inquiry wasn't whether their service was satisfactory. It was to get some business for ourselves.

Q. Didn't you come away with the impression that General Motors was satisfied with the service of PMT?

Mr. Jacobson: Object to that as an attempt to read the [fol. 660] other man's mind, conjecture twice removed; what he came away with. He didn't get the business, only part of it.

Exam. Linn: Are you able to answer that?

The Witness: Do I know what General Motors thought about their present carrier? Is that the question?

Exam. Linn: Yes.

The Witness: No, I didn't ask.

By Mr. Johnson:

Q. The traffic shown on your Exhibit 103 was all Chrysler traffic, wasn't it?

A. Yes.

Q. And the traffic shown on Exhibit 104 consisted of traffic on which someone other than General Motors paid the transportation charges?

A. Yes. It was all General Motors products.

Q. The government actually paid the transportation charges?

A. Yes.

Q. If this application were approved, you would not be deprived of any business that you are presently enjoying; isn't that a fact?

A. I don't know. We have enjoyed some government business out of there. I don't know how that would affect that.

Q. You know that that traffic billed by General Motors is presently moving by rail, don't you?

A. I understand they just moved 117 by truck that we were deprived of.

[fol. 661] Q. I am talking about the destination territory involved here, excluding Camp Mercury.

Mr. Jacobson: You asked the question about diversion of traffic. He was talking about territory that he has the authority to serve. He was just deprived of 118 cars.

Mr. Johnson: I am stating my own question.

Mr. Jacobson: I am objecting to it because you are circumscribing conditions that changed the question.

Exam. Linn: Apparently the matter involves a question already of record.

Mr. Johnson: I won't pursue it.

That is all I have.

Redirect examination.

By Mr. Jacobson:

Q. Mr. Lee, you testified in response to my question that you moved some Oldsmobiles or some General Motors products out of the BOP plant in California. On cross-examination you were asked about any other movements besides the Oldsmobiles into Arizona. Did you have in mind the—or where did those vehicles move from that you moved in California for General Motors?

A. They moved to San Francisco. I don't recall the year; I think it was either the last of '55 or maybe during '55, two loads that were moved.

Q. Where did you get those?

A. We got them right at the plant. I think those vehicles [fol. 662] we were able to get off of the PMT property.

Recross examination.

By Mr. Johnson:

Q. Those were intrastate movements weren't they?

A. Yes, sir.

Q. That is all I have.

OFFER IN EVIDENCE

I offer Exhibit No. 105.

Exam. Linn: All exhibits mentioned during the course of the testimony of Mr. Lee have been received.

Mr. Jacobson: I now call Mr. Lee on behalf of Dallas & Mavis Forwarding Company.



DAVID M. LEE having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Jacobson:

Q. Do you occupy any position with Dallas & Mavis Forwarding Company?

A. Yes, I do.

Q. What position do you occupy with them?

A. Vice-president.

Q. What is your position with Dallas & Mavis Forwarding Company?

A. Vice-president.

Q. What is the business of Dallas & Mavis Forwarding Company?

A. They are transporters of motor vehicles and related—

Q. And Dallas & Mavis Forwarding Company is a—Robertson Trucking Company is a wholly owned subsidiary?

[fol. 663] A. Yes. Dallas & Mavis own all the stock.

Q. I show you a document entitled Sub 11, MC 29886, Dallas & Mavis Forwarding Company, and ask you if that is one of the authorities held by Dallas & Mavis Forwarding Company?

A. Yes, it is.

Q. And what, if any, facilities does Dallas & Mavis Forwarding Company have in the State of California?

A. They maintain personnel and joint use of the yard in San Leandro, California.

Q. Does Dallas & Mavis Forwarding Company perform any services under their Sub 11?

A. Yes, they do.

Q. Is Dallas & Mavis Forwarding Company ready, able and willing to transport any vehicles that are offered to them under their authority, under the Sub 11, that might be involved in this proceeding?

A. Yes, sir.

Mr. Jacobson: That is all. I offer Sub 11.



Exam. Linn: It is marked Exhibit 106 and received in evidence.

(Protestant's Exhibit No. 106, Witness Lee, was marked and received in evidence.)

Exam. Linn: Any questions of the witness?

Mr. Johnson: No questions.

Exam. Linn: That is all, Mr. Lee. Thank you.

[fol. 664] (Witness excused.)

Mr. Jacobson: May these exhibits be marked, Mr. Examiner?

Exam. Linn: They are marked as follows: Exhibit 107 is the Permit of Hadley Auto Transport; the map is 108; the list of equipment is 109; the point list is 110; the exhibit showing vehicles transported is 111; the balance sheet is 112.

(Protestant's Exhibits Nos. 107 through 112, Witness Young, were marked for identification.)

T. J. Young was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name, please.

A. T. J. Young.

Q. Where do you reside?

A. Palo Alto, California.

Q. What is your business or occupation?

A. Vice-president of Hadley Auto Transport.

Q. What is Hadley Auto Transport?

A. A transporter of motor vehicles.

Q. Where is the principal place of business of Hadley Auto Transport?

A. Long Beach, California.

Q. At that location what, if any, facilities does the company have?

A. A terminal of approximately ten acres with storage [fol. 665] facilities, with administrative offices, with shops and garage facilities and the other usual facilities of a motor carrier.

Q. At what other points in California does your company maintain facilities?

A. A similar terminal at Milpitas, California.

Q. Approximately how many acres do you have there?

A. About eight and a half acres.

Q. Is that your own building on it, office building, shops and so forth?

A. Yes.

Q. Now, where else does the company maintain facilities?

A. The only other facility in California is a storage yard in Los Angeles adjacent to the Mercury plant in Los Angeles, and in Arizona at Wickenburg, Arizona, we have a driver relay station.

Q. Hadley Auto Transport is a contract carrier, is it not?

A. Yes.

Q. And the authority they have is set forth on Exhibit No. 107 for identification?

A. Yes.

Q. I will call your attention to Exhibit 108 for identification. What does that purport to show?

A. That is a map showing the extent generally of Hadley's authority in initial movements.

Q. Of automobiles?

[fol. 666] A. Of automobiles.

Q. That shows from Richmond and from points in Los Angeles County to the various states as outlined on the list; is that correct?

A. Yes.

Q. And a substantial portion of this territory is the territory proposed to be served by the applicant in this proceeding, is it not?

A. Yes.

Q. Exhibit 109, is that the most recent list of equipment owned and operated by the Hadley Auto Transport?

A. Yes, it is.

Q. All of the units of equipment, trailers, are they specially adapted to the transportation of motor vehicles?

A. They are.

Q. Do they compare favorably with other units of equipment owned and operated in the Western states for the transportation of motor vehicles?

A. I believe so.

Q. Are they adaptable to the transportation of various types and forms of motor vehicles?

A. Yes.

Q. In the conduct of your business do you handle vehicles of the typed used by General Motors?

A. Yes.

[fol. 667] Q. Manufactured by General Motors?

A. Yes.

Q. Your company has new as well as initial as well as secondary movements in various part of the western states?

A. We have.

Q. Under those authorities do they move all types of vehicles?

A. Yes.

Q. Next I show you Exhibit No. 110 and ask you what that purports to show.

A. It is a list of cities and towns served by the company in the Western states into which its initial authority extends.

Q. Particularly calling your attention to Arizona, Nevada and Utah and New Mexico, with what degree of regularity is your equipment in those states?

A. In most cases there is daily service into those states.

Q. Is it less frequent into Montana and Idaho?

A. Yes.

Q. Do vehicles move into that territory?

A. Yes.

Q. Do you know how they move?

A. From what points?

Q. From Los Angeles area?

A. They move from the Los Angeles area from the plants with which I am most familiar, irregularly.

Q. You do conduct the service into that territory when [fol. 668] the traffic is offered?

A. We do.

Q. I show you Exhibit No. 111. Is that taken from the books and records of the company?

A. It is.

Q. Of course it shows the number of vehicles transported from Los Angeles County to the states involved; is that correct?

A. Yes.

Q. The major portion of your movement is to the states immediately adjacent to California; is that correct?

A. Yes; the states closest to California.

Q. Do you know whether or not the question of rates may divert part of the traffic to rail to the most distant points?

A. I don't know.

Q. I show you next Exhibit No. 112 and ask you if that is taken from the books and records of your company.

A. It is.

Q. Is your company ready, able and willing to secure such additional equipment as may be necessary to take on any new business that might be offered?

A. We are.

Q. Would your company be willing to enter into a contract with General Motors for the transportation of their products in the territory you are authorized to serve?

A. We would.

[fol. 669] Q. Is the company willing, ready and able to seek such additional authority as may be required to give them a service to all the territories that they might require?

A. We would.

Q. Has your company transported any motor vehicles for General Motors, to your knowledge, out of Raymer or Oakland?

A. No.

Q. To your knowledge has your company made General Motors traffic men familiar with the rights and authorities you have in the offer of service that you have?

A. In some instances.

Mr. Jacobson: That is all.

Exam. Linn: Cross-examine.

Cross examination.

By Mr. Johnson:

Q. I would like to ask a question for clarification. Exhibit 112 does not show the origin points related to these destination points. Can you explain that?

A. Exhibit 112?

Q. 110. I'm sorry.

A. Exhibit 110?

Q. Yes.

A. The origin points from which the vehicles would move to those points would be in general, according to our authority Los Angeles County, specifically in the county. There would be an assembly plant at Long Beach and one at Los Angeles.

[fol. 670] Q. That really gives a breakdown of your companion exhibit, doesn't it? Exhibit 111?

A. I don't understand your question.

Q. Well, would the destination points shown on Exhibit 110 be representative of the points involved in the movement shown on Exhibit 111?

A. Yes.

Q. And Hadley is a contract carrier?

A. Yes, sir.

Q. And with what company does it presently have contract for initial movements?

A. Ford Motor Company.

Q. How long have you served Ford Motor?

A. About 25 years.

Q. Do you assign equipment to the exclusive use of the Ford plant?

A. I don't believe we would—we assign the equipment, inasmuch as Ford is at this present time our only initial shipper. It is available to it along with any secondary shippers that we might have.

Q. So, as a practical matter, it is devoted exclusively to Ford service as of the present with respect to initial movements?

A. With respect to initial movements it would be.

Q. Now, where are your storage facilities at Los Angeles?

[fol. 671] A. Directly across the street from the Lincoln-Mercury assembly plant in Los Angeles.

Q. How far are those facilities from the Raymer and South Gate plants?

A. South Gate plant I would estimate four or five miles, and from the Raymer plant I would estimate 20 miles. I may be a little off.

Q. Just roughly.

A. Yes.

Q. Now, in this long standing relationship with the Ford Motor Company are you given advance information as to model changes?

A. We are.

Q. Do you regard that as of a confidential character and not to be revealed to competitors of Ford?

A. With respect to styling, any information along that line, of course, is not made available to us. Dimensions of cars are, and I would imagine that it could become of that nature.

Q. Are your representatives ever called to the main plants of Ford to actually see the new models in advance of their release?

A. Yes.

Q. So that you do get advance information as to style changes?

A. Yes, at times.

Q. And that is confidential, isn't it?

A. Yes.

Q. Now with respect to Milpitas, where are your facilities?

[fol. 672] A. Approximately one mile from the Ford assembly plant.

Q. And how far is that from the Oakland plant of General Motors?

A. I would estimate 28 miles; perhaps somewhere in that neighborhood.

Q. Are you actually handling any traffic for Ford from that plant, the Milpitas plant?

A. Yes.

Q. You haven't offered any exhibits showing the movement from that plant, have you?



A. No, sir.

Q. To the extent that you have reported from the Interstate Commerce Commission to serve the Milpitas plant of Ford, are you exercising it?

A. Yes.

Q. So that pursuant to that authority you are actually making distribution from Ford Motor Company to the destination territory you are authorized to serve?

A. That is correct.

Q. When was the Milpitas plant put into operation?

A. In the spring of 1955.

Q. Prior to that time did Ford have a plant at Richmond?

A. It did.

Q. And did you serve the Richmond plant?

A. Yes.

Q. That plant was deactivated, was it not?

[fol. 673] A. Yes.

Q. So that since its deactivation you naturally have not transported any vehicles with respect to Richmond?

A. That's correct.

Q. Now, your permit authorizes transportation from places of manufacture or assembly in Richmond, California. The Melrose plant of General Motors is not located in Richmond, is it?

A. No.

Q. The financial exhibit, Exhibit 112, shows common capital stock of Hadley, \$95,000, and unappropriated surplus, approximately \$640,000. Hadley is incorporated, is it not?

A. Yes.

Q. Is the stock of that corporation owned by Everett Hadley and members of his family?

A. Some of it is; a substantial amount of it is.

Q. Mr. Hadley owns 586 out of 1,000 shares, doesn't he?

A. I think so.

Q. How many shares does his wife own? She owns some, doesn't she?

A. I don't believe so.

Q. Clara P. Hadley owns 229 shares?

A. That's correct.

Q. How is the balance held?

Mr. Jacobson: If you have the information let me look at it, and I will tell you if it is right.

[fol. 674] Mr. Johnson: I am satisfied with my information.

The Witness: I can't tell you the precise ownership to the number of shares. I will say this: All of the stock except 35 shares is owned by members of the family.

By Mr. Johnson:

Q. Now, you are able to give the Ford Motor Company, in your capacity as a contract carrier, truckaway service to the normal distribution areas of its assembly plants in California, aren't you?

A. Yes.

Mr. Johnson: That is all I have.

Redirect examination.

By Mr. Jacobson:

Q. Mr. Young, within the past few years has Hadley Auto Transport had contracts with other assembly plants besides Ford Motor?

A. It has.

Q. With what plants?

A. For a number of years and up to two or three years ago when the two plants were deactivated, it had contracts covering initial traffic with the Nash plant at El Segundo, California, and the Willys plant at, I believe, Vernon, California, into a number of states.

Q. Did they transport vehicles under those contracts?

A. Yes.

Q. May I ask one question that should have been on direct? Does your company maintain a safety program?

[fol. 675] A. It does.

Q. What does it consist of?

Mr. Johnson: I will stipulate that Hadley—

Mr. Jacobson: It is a very extensive plan.

Mr. Johnson: I will stipulate it is an extensive and effective plan.

Mr. Jacobson: That's fine.

Exam. Linn: Any objections to the exhibits?

Mr. Johnson: No objection.

Exam. Linn: Exhibits 107 to 112 inclusive are received in evidence.

(Protestant's Exhibits Nos. 107 through 112, Witness Young, were received in evidence.)

Exam. Linn: Thank you, Mr. Young. You are excused.

(Witness excused.)

Exam. Linn: We will take a five minute recess.

(Short recess.)

Exam. Linn: The hearing will be in order.

Mr. Johnson: Mr. Examiner, Mr. Earp has asked the applicant to produce certain information. He wanted an exhibit showing the equipment owned, operated and assigned by PMT to the three General Motors assembly plants in California, and he also wanted to know whether that equipment was used exclusively in that service. I have the exhibit ready and would like to have it marked for identification.

[fol. 676] Exam. Linn: It will be marked Exhibit 113.

(Applicant's Exhibit No. 113, Mr. Johnson, was marked for identification.)

#### OFFER IN EVIDENCE

Mr. Johnson: I offer that exhibit.

Mr. Earp: No objection.

Exam. Linn: Is it understood this document will satisfy the inquiry that you made?

Mr. Earp: Yes, sir.

Exam. Linn: The stipulation is allowed.

Exhibit 113 for identification is received in evidence as correctly showing what it purports to show.

(Applicant's Exhibit No. 113, Mr. Johnson, was received in evidence.)

Mr. Johnson: There was one additional fact that Mr. Earp was interested in that we discussed and could cover by stipulation.

This equipment is devoted exclusively to the service of these plants, certain portions being assigned specifically to each of the plants. We made a check of the records of the company for the last three months of 1956 and find that the only change in assignments was one unit switched from one plant to another plant for service. The only occasion for taking these units out of service of any of the plants is either retirement, or if the volume of business for a protracted period should result in a very substantial surplus [fol. 677] of equipment, it is withdrawn from the service of the plant.

Is that stipulation satisfactory to you, Mr. Earp?

Mr. Earp: Yes, it is satisfactory.

Exam. Linn: The stipulation is allowed.

Mr. Earp: Mr. Examiner, now that the exhibit and the stipulations in which I was interested have been put into the record, I wonder if I might ask leave to be excused from the hearing?

Exam. Linn: You may go if you wish.

Mr. Handler: Mr. Examiner, I ask that the following exhibits be marked for identification.

As Exhibit No. 114, Certificate of Public Convenience and Necessity, Convoy Company; Exhibit No. 115, terminal stations of Convoy Company; as Exhibit No. 116, Convoy Company list of equipment, November 20, 1956; Exhibit No. 117, Safety Program; as Exhibit No. 118, Convoy Company Balance Sheet as of December 31, 1956; and as Exhibit No. 119, Profit and Loss Statement for the year ending December 31, 1956; and as Exhibit No. 120, map of Berkeley, California.

Exam. Linn: They may be marked in the manner specified.

(Protestant's Exhibits Nos. 114 through 120, Witness Weisler, were marked for identification.)

L. F. WEISLER WAS SWORN and testified as follows:

Direct examination.

[fol. 678]

By Mr. Handler:

Q. Mr. Weisler, will you please state your full name, your position with protestant Convoy Company, and your business address?

A. L. F. Weisler—W-e-i-s-l-e-r. I am president of Convoy Company, and my business address is Post Office Box 348, San Jose, California.

Q. What are your duties?

A. I am president of the company and devote my time to the management of the various and all phases of the company.

Q. Are you familiar with its operations?

A. Yes, I am.

Q. What facilities does it maintain at or near San Jose, California, where you maintain your place of business?

A. At San Jose we have a six-acre yard, a concrete terminal building containing our shops, repair facilities, offices, driver facilities, dispatching facilities and so on.

Q. That, along with the other terminal stations is described generally in Exhibit No. 115 for identification?

A. Yes. Exhibit 115 gives mention of that location and other locations where we have terminal facilities.

Q. Can you tell us which of these are owned by Convoy or its affiliates and which are leased?

A. We have a 35 year lease on the property at Seattle, which has about 25 years to go. We leased the land only; we own all the improvements on it.

[fol. 679] In Portland we lease the terminal facility ground, and we own all of the improvements on that ground, and that lease has approximately ten years to go.

Q. In Los Angeles?

A. In Los Angeles we rent on a month to month basis the facilities shown on the exhibit. San Jose I have just described.

At Billings, Montana, we—oh, at San Jose we own the land and the building through a wholly owned terminal

building company which Convoy Company leases from the terminal company.

At Billings we rent the facility described. The same would apply at Logan, Utah, mentioned on page 2, and at Laramie, Wyoming, we use the facilities of the large super service station and its ground facilities as needed. Right at the present time we have no activity at Laramie.

Q. Are all of the stations which you have described presently being used in the common carrier operations of Convoy Company?

A. Yes, they are.

Q. Are you presently building any new terminal within the territory embraced by this application?

A. Yes. At Los Angeles we are building a terminal on leased property. We are engaged in building that terminal facility right now, which should be ready to move into by mid-summer.

Q. And will that then be used in the common carrier operations of Convoy Company?

A. Yes, it will.

[fol. 680] Q. Are the operating rights held from the Interstate Commerce Commission authorizing motor common carrier services described in Exhibit No. 114 for identification?

A. Yes, they are.

Q. Included in those rights does your company hold initial authority in truckaway operations from Richmond, California, to points in Idaho, Washington and Oregon?

A. We do, described on page 3 under Sub 22.

Q. Now, was that authority used at one time for the movement of Ford automobiles and trucks from the plant at Richmond to the states named?

Mr. Johnson: Pardon me. Could I have that read? I didn't hear the question. I have no objection.

(Question read.)

The Witness: Yes.



By Mr. Handler:

Q. Does your company also hold secondary authority in truckaway movement for movement of motor vehicles between points in California, Oregon, Washington, Idaho and Montana, et cetera, as, for example, shown in Sub 5 on page 1 of Exhibit No. 114?

A. Yes, we do, described in Sub No. 5.

Q. Have you determined the population as revealed in the 1950 census of the Census Bureau of the City of Richmond, California?

A. Yes, I have. It exceeds 99,000, the population.

Q. And pursuant to the Commission's rules designating [fol. 681] a commercial zone, you then have four miles within the city limits of Richmond as the commercial zone of Richmond?

A. That is correct.

Q. Have you caused to be prepared under your direction Exhibit No. 120 which shows the distance from the city limits of Richmond to the city limits of Oakland?

A. Yes, I have.

Q. And according to the map, Exhibit No. 120, is the city of Oakland within four miles of the city of Richmond?

A. It is within three and a half miles.

Q. And the blue line indicates the mileage from one to four, does it not?

A. That's right, the blue line with the crosses across the blue line.

Q. It is then the opinion of your company that it can serve Oakland, California, under its authority and can serve Richmond, California?

A. That is my understanding, yes.

Q. Do you offer service on that basis?

A. Yes.

Q. Now, with respect to equipment, have you caused the fleet to be listed in Exhibit No. 116 as of November 20, 1956?

A. Yes.

Q. Is that equipment specifically designed and dedicated to the transportation of motor vehicles?

[fol. 682] A. All of it is.

Q. And how many motor vehicles can you transport on the varying combinations that you have available? From what to what?

A. Most of this equipment is six unit or six car or truck capacity. There are, however, a few five unit capacity older type rigs listed on this exhibit, but basically they are recent model six car capacity equipment.

Q. How many units are in that fleet?

A. Well, there are listed 181 revenue trucks and trailers and 203 revenue trailers and semi-trailers. Since this was prepared, November 20, however, we have obtained 20 additional trucks, new trucks, and most of those 20 are now in operation. Trailers are being built to go with them.

Q. How many units will they transport?

A. All six car capacity.

Q. Are all of the units shown on Exhibit No. 116 now being utilized by Convoy Company in its operations?

A. Yes.

Q. Generally in the eleven western states?

A. That is right.

Q. Does the list in Exhibit No. 116 represent any recent increase in a number of units that you formally had?

A. Yes, it does. I might say this: Fully 50 per cent of this equipment has been put in service since the first of 1955.

Q. As a result of these acquisitions that you have de-[fol. 683] scribed, are you now able to accommodate all demands for service made upon you?

A. I would say yes, we are.

Q. Could you accommodate any additional traffic?

A. Well, we can always accommodate additional traffic.

Q. Would you accommodate such traffic as is pertinent to this case which might be offered to you by General Motors Corporation from Oakland, California?

A. Yes. We could make arrangements to handle it.

Q. And if your existing fleet should prove insufficient, does your company have the resources to acquire additional equipment?

A. Our company and our company's stockholders do have that ability and would do so.

Q. Exhibit No. 118 is a balance sheet as of December 31.

1956, Mr. Weisler. Is it taken from the books and records of your company?

A. It is.

Q. Are your records kept in conformity with the uniform system of accounting of the Commission?

A. Yes, they are.

Q. To the best of your knowledge and belief does it truly reflect the assets, liabilities, capital stock and surplus of your company as of December 31?

A. Yes.

[fol. 684] Q. To your knowledge has there been any substantial change since that time?

A. No, there hasn't.

Q. Was the profit and loss statement, Exhibit 119, similarly prepared?

A. Yes, sir.

Q. Now, in addition to the assets that are there set forth, do you have any commitment from your bank with respect to your ability to incur additional equipment obligation?

A. We recently got a commitment from the bank indicating they were agreeable to extending up to \$300,000 additional money for additional facilities.

Q. Would that kind of money represent a down payment on any additional equipment you wished to purchase?

A. Yes, a substantial amount, on the basis on which we operate.

Q. Now, in addition to the initial authority that you have, you have described certain secondary authority. Does your company interline with other motor carriers?

A. Yes.

Q. Is it willing, ready and able to effect interline arrangements for any traffic that may be involved in this proceeding?

A. Oh, yes.

Q. And does it stand ready to establish and perform single line initial service from Oakland to points in Oregon, Idaho and Washington?

[fol. 685] A. Yes, sir.

Q. In your service that you now perform under your certificate, do you blanket all of the towns and communities in the eleven western states pretty much?

A. Yes, and we have certain authorities that extend beyond the eleven western states.

Q. Do you have these terminals scattered throughout the eleven western states which are used for that service?

A. For that purpose, yes.

Q. And have you ever solicited the business of General Motors Corporation at Oakland, California for movement into Idaho, Oregon and Washington?

A. Yes, I have.

Q. Will you tell us about that effort and what occurred, if anything?

A. I would say approximately in the spring of 1954 I submitted to Chevrolet division with General Motors in Oakland a proposal as to service and charges on vehicles moving from Oakland into the northwest states.

Q. Was that rate proposal detailed to show the cost at the points in these three states?

A. It was detailed to the extent that it showed several registrations by counties in the states, the distance from Oakland to each point where I considered a Chevrolet dealer might logically be located; our rate to that destination.

686] Q. Who did you submit that to?

A. Mr. Cron.

Q. Mr. George Cron who has testified in this proceeding?

A. Yes.

Q. And with what result?

A. He wrote me that he wasn't interested at that time.

Q. Now, did anything occur subsequently in connection with your offer?

A. Yes. We got a general reduction in rail rates into the State of Oregon and a few points in the State of Washington.

Q. From what points?

A. From Los Angeles group points and from San Francisco group points.

Q. Did you attempt to have those rates suspended?

A. I did.

Q. Were you successful?

A. No.

Q. Now, did the rails defend the rates?

A. Yes, they did.

Q. Were those rates initiated by Southern Pacific Company?

A. I wouldn't be in a position to know.

Q. Do you have the reply that was filed on behalf of the rail lines in that proceeding?

A. Yes, I do.

Q. Did it refer to any truck competition from Oakland [fol. 687] to the General Motors plant at Oakland to the three states as justification for the state proposal?

A. I did and named my rates specifically to given points. As an example, Eugene, Oregon, and Lewiston, Idaho.

Q. The proposed rates of Convoy Company—or the existing rates of Convoy Company?

A. The existing rates of Convoy Company and the proposed rates for Chevrolet.

Q. And as a result those reductions were established?

A. By the rail lines, yes.

Q. Were you ever then successful in getting any of the traffic yourself?

A. No.

Q. Do you know how the traffic is presently moving from Oakland to points in Oregon, for example?

A. Chevrolet traffic, my observation is that it moves via railroad.

Q. Do you—that is your company—hold itself out to perform service for any of the manufacturers or assemblers or dealers who offer vehicles to you?

A. Oh, yes, we do. We serve a great many shippers.

Q. And do you, in the course of your operations, transport General Motors vehicles?

A. Not from a General Motors plant nor for the account of General Motors, but we do serve a great many General [fol. 688] Motors dealers and distributors in secondary movement.

Q. Have you transported shipments which originated at the plant at Oakland?

A. Occasional movements of Chevrolets, yes.

Q. Is this traffic available there attractive to your company?

A. Well, anything in the way of an automobile is attractive regardless of who ships it.

Q. You serve the Ford Company substantially, do you not?

A. Substantially, yes.

Q. Have you, in your conduct of operations for the Ford Company in the eleven western states, found that they use both rail and truck service?

A. They do.

Q. You don't get it all?

A. No.

Q. Now, the applicant here, Mr. Weisler, proposes a contract carrier operation. Your service, you testified, is common carrier character; is that correct?

A. That is right, sir.

Q. Is there any objection of your company, other than its general objection to this application being granted at all, to its being granted as a contract carrier?

A. Well, we don't like to compete with any carrier when we don't know what his charges are.

Q. When a carrier operates as a common carrier, are [fol. 689] you able to find out what its published rates are?

A. Yes, we are.

Q. Do you publish a tariff covering all your operations?

A. Yes.

Q. Is it open to public inspection?

A. Yes, it is.

Q. Your company is a protestant in this proceeding, then, to the extent that you have authority to serve the Oakland plant; is that correct?

A. To the points in the—

Q. And to the extent that you have authority in secondary service which you could use to interline traffic originating at the southern California plants?

Mr. Johnson: I object to that as leading.

The Witness: Yes.

Mr. Johnson: All these questions have been leading.

Exam. Linn: I believe it has already been covered.

Mr. Handler: I have completed with the witness, and you may cross-examine.



## OFFERS IN EVIDENCE

I will offer the exhibits in evidence.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 114 through 120 inclusive are received in evidence.

(Protestant's Exhibits Nos. 114 through 120, Witness Weisler, were received in evidence.)

[fol. 690] Cross examination.

By Mr. Johnson:

Q. Mr. Weisler, you and Hadley both serve Ford, don't you?

A. That is correct.

Q. Hadley is a contract carrier.

A. So I understand.

Q. Have you opposed Hadley's application?

Mr. Jacobson: Which one?

Mr. Johnson: Any of them.

The Witness: I can't recall. I think maybe we have. If we had an opportunity, we would.

By Mr. Johnson:

Q. You don't like any contract carrier, including Hadley?

A. We generally protest any application for authority which in any way parallels any authority we have. At least we hope.

Q. You feel particularly strongly, though, about competition from a contract carrier like Hadley, don't you?

A. Shall I tell you exactly how I feel?

Q. About Hadley, yes.

Mr. Jacobson: Object to that as incompetent, irrelevant and immaterial.

Mr. Johnson: It seems to me that this witness is represented by able counsel who really doesn't need Mr. Jacobson's assistance.

Mr. Jacobson: I am still a party to the proceeding and [fol. 691] I can make an objection.

Exam. Linn: As I understand it, the Interstate Commerce Act contains some provisions which state contract carriers operate in a lawful manner. Perhaps the witness should seek another forum if he dislikes the contract carrier too much.

Mr. Johnson: I won't pursue my question.

By Mr. Johnson:

Q. Now, with respect to authority, you have no initial movement authority from South Gate or Raymer?

A. No, we don't.

Q. And your authority for initial movements from the Bay Area refers to Richmond and is limited to Idaho, Oregon and Washington on initial movements?

A. That's right, on initial movement.

Q. For how many years have you been serving Ford?

A. Oh, since, I would say, about 1930.

Q. And do your company and the Hadley company provide service from Milpitas, all of the truckaway service for Ford?

A. We are the only carriers that have initial authority from Milpitas that I know of.

Q. You are the only two carriers that Ford uses?

Mr. Handler: You mean motor carriers, counsel?

Mr. Johnson: Motor carriers.

The Witness: Motor carriers to my knowledge.

By Mr. Johnson:

Q. You haven't actually had any operations from Richmond itself, have you, since that plant was deactivated?

[fol. 692] A. Yes. I would also like to go back to the last question; and short hauls Ford out of Milpitas, and with respect to Richmond, we hauled automobiles out of Richmond for a period of approximately 24 months prior to the closing of that plant and the reopening of the Milpitas plant.

Q. How far is your yard at San Jose from Milpitas?

A. One and two tenths miles.

Q. Two tenths. How far—

Mr. Jacobson: One and two tenths.

The Witness: One and two tenths.

We load on the Ford property where Ford provides for us a 13 acre loading yard, and we have some facilities there, dispatch office shared jointly by Hadley and ourselves:

Q. Not by Insured?

A. Insured uses it.

Q. Insured uses, too?

A. They all use it.

Q. How far is your San Jose yard from Melrose?

A. Well, just—

Q. Roughly.

A. Roughly 30 miles. Melrose yard—no, a little less, maybe, than 30 miles.

Q. Now, you testified, as I recall, that you have been increasing your equipment in the last year or two years.

A. Yes.

[fol. 693] Q. Does that indicate expansion in the volume of your business?

A. Yes.

Q. I notice from your Exhibit 116 that you use leased equipment to a rather substantial extent. Is that correct?

A. We have full-time exclusive year to year leases on some tractors and three or four trailers, I imagine. They are exclusively tied up with us, painted our colors, the drivers are on our payroll the same as the drivers driving our own trucks.

Q. Do you work closely with the Ford Company with respect to scheduling of movement?

A. Yes.

Q. Do you receive advance information of a confidential character from it?

A. On what?

Q. On model changes.

A. Model changes? Sometimes we do. We get—sometimes we get some rather rough prints, and that's the extent of it. I have been at Detroit once in the last ten years to look at one.

Q. Now, on solicitation, you did not solicit the business at Raymer or South Gate, did you?

A. I have solicited business there, but not for a thorough haul-truck service. I have solicited business on a joint rail-truck set up.

Q. With respect to your operating rights from Richmond to the states involved, are you transporting Ford products to those states regularly?

[fol. 694] A. From Milpitas?

Q. Yes.

A. Yes, we do.

Q. Do you serve anyone else in initial movements of new automobiles, trucks and buses?

A. Well, we serve more than one Ford plant. We serve the Mercury plant at Los Angeles, and I think that's all the initial movement we have.

Q. What authority do you have to serve that plant? I mean with respect to destination territory.

A. From the authority it reads from the site of the Lincoln-Mercury plant of Ford Motor Company, Maywood, California, to points and places in Washington, Oregon, Idaho and Montana.

Q. Are you exercising those rights?

A. In a limited way.

Q. But you do actually receive shipments for movements to those states?

A. When our rates are competitive with rail, yes.

Q. Have you had shipments during the last year?

A. Yes.

Q. To various points in those states?

A. To some points in those states, yes.

Q. The determination as to when your service will be used, of course, is with the management of the Ford plant, there?

[fol. 695] A. Yes.

Q. Now, getting back to your movements from Richmond, there, I understand, you have a greater volume of movement to different points in the destination states.

A. Richmond isn't operated?

Q. I mean Milpitas. I beg your pardon.

A. Oh. Well, yes, we have a larger volume out of there than we do out of Los Angeles.

Q. Do you find that the Ford dealers like your truckaway service?

A. Some of them do; some of them don't.

Q. That must be rather discouraging.

A. It is discouraging, but—

Q. And what is the complaint about your service from the dealers who don't like it?

A. The dealers that don't like it, they claim that the car was so dirty they couldn't properly inspect it and there was a scratch and we refused the claim because they didn't take exception. Other dealers like it.

Q. Other dealers like it?

A. Most of them. I will say the larger percentage of them like it.

Q. When did you acquire the Milpitas authority?

A. I am afraid the date isn't shown here. I should have got a copy of the certificate. But I will say we acquired the authority approximately six to nine months, as a guess, [fol. 696] prior to actual operation.

Q. Of the Milpitas plant?

A. That was for the purpose of following the traffic from the old Richmond plant over to the new Milpitas plant?

A. That's what they call it, yes.

Mr. Johnson: That is all.

Redirect examination.

By Mr. Handler:

Q. Mr. Weisler, if General Motors at Oakland should assure you of any volume of traffic would you establish such terminal facilities at or near their plant as would be necessary to efficiently handle the traffic?

A. We would do exactly the same as we have done at the Milpitas plant and the Mercury plant in Los Angeles.

Q. Is that what you did?

A. That is what we did.

Q. Now, you were asked by Mr. Johnson on cross-examination if you hauled any other motor vehicles in initial traffic, and I think he used the term "automobiles, trucks and buses" which in the Commission's language, includes trailers. In your Sub 33 you do have initial authority on

trailers from Portland and St. Johns, Oregon. Do you exercise that authority?

A. Oh, yes, we do. When we have—that reminds me. We have initial movement out of Seattle. We actually do business on initial movement out of Seattle on truck.

Q. Those aren't for Ford, are they?  
[fol. 697] A. No.

Q. And the ones out of Portland and St. Johns aren't for Ford?

A. No.

Q. So you do not restrict yourself to Ford traffic on initial haul?

A. No, we take it from anybody.

Mr. Handler: That is all.

I wish to thank Mr. Johnson for his complimentary comment. I will raise my fees accordingly.

Exam. Linn: You are excused, Mr. Weisler.

(Witness excused.)

#### COLLOQUY

Mr. Jacobson: Mr. Examiner, Mr. Boner, B & H Transportation; was here two days of the hearing and was unable to come back, and I would like to offer in evidence his rights and list of equipment. Unfortunately since Studebaker closed down he hasn't much of a showing of business, but he is ready, able and willing to transport vehicles.

Mr. Johnson: I have advised Mr. Jacobson I would be willing to stipulate that these exhibits may be admitted.

Exam. Linn: The one page document covering operating authority of B & H Truckaway is marked Exhibit No. 121, and the list of equipment is marked Exhibit 122 and, by stipulation of the parties are received in evidence as correctly showing what they purport to show.

(Protestant's Exhibits Nos. 121 and 122, Mr. Jacobson, were marked and received in evidence.)

[fol. 698] Exam. Linn: Is there any further evidence for protestants?

(No response.)



Exam. Linn: Does the applicant have anything further?

Mr. Johnson: Yes. I have three exhibits. The first exhibit is rural shipments by Southern Pacific Company to South Gate. May that be identified?

Exam. Linn: Exhibit No. 123 for identification.

Mr. Johnson: The second exhibit containing similar information from Raymer.

Exam. Linn: It will be marked Exhibit 124.

Mr. Johnson: The third gives similar information from Oakland.

Exam. Linn: 125.

(Applicant's Exhibits Nos. 123, 124 and 125, Mr. Johnson, were marked for identification.)

Mr. Johnson: I have discussed this with Mr. Cronon. This exhibit follows the pattern of his exhibits, and he has no objection to the introduction of these exhibits without my delaying this proceeding by calling a witness. I don't know whether that is satisfactory to Mr. Handler and Mr. Jacobson or not.

Mr. Jacobson: What is the source of the information contained in the documents, the records of the Southern Pacific or the records of the General Motors?

Mr. Johnson: South Gate is based on a waybill study [fol. 699] conducted by the Southern Pacific. The other two exhibits are based on movement figures supplied by General Motors and studies conducted by rate analysts.

Mr. Jacobson: Are the underlying documents available if we wanted to see them in connection with any of these?

Mr. Johnson: Yes.

Mr. Jacobson: May we reserve the right to look at them?

Mr. Johnson: Most certainly.

Exam. Linn: Is it stipulated the documents may be received without testimony as correctly showing what they purport to show?

Mr. Cronon: Yes.

Exam. Linn: The stipulations are received.

Exhibits 123, 124 and 125 for identification are received in evidence.

(Applicant's Exhibits 123, 124 and 125, Mr. Johnson, were received in evidence.)

Mr. Johnson: Now, that concludes the evidence applicant submitted in its own behalf.

However, I have been requested by counsel for some of the protesting parties to provide certain additional information for the record. Now, Messrs. Bieneman and Smith wanted for this record the location of other automobile assembly plants in California and the rail carrier or carriers which served those plants. I have that information [fol. 700] and am prepared to state it for the record. Of course, the General Motors plants that have been discussed in this proceeding are served by the Southern Pacific exclusively.

Going to the other plants, the Ford Motor Company has a plant at Milpitas which is served by the Western Pacific and Southern Pacific. The Richmond plant which was deactivated was served by the Santa Fe. The Ford Motor Company also has a plant at Long Beach which is served by the Union Pacific exclusively.

Of course I am talking about rail service in all of the statements.

The Ford Motor Company, Berkeley division, has a plant in Los Angeles which is served by the Los Angeles Junction Railroad Company, that company being owned by the Santa Fe. Chrysler Corporation has a plant at Los Angeles which is also served by the Los Angeles Junction.

Studebaker Packard Corporation has a plant at Los Angeles on the railroad lines of Los Angeles Junction. I also understand that the new plant of the Ford-Mercury Company is being created in Los Angeles which will be served exclusively by the Santa Fe. That takes care of that information.

In the course of the hearing we agreed to state the basis of the stock value shown on applicant's balance sheet exhibit. That basis is par value at \$50 per share.

The next request for information I had was from Mr. [fol. 701] Smith, as I recall it, and he wanted a breakdown of traffic handled by PMT in 1955 and the first six months of 1956 as between interstate and intrastate movements. We have made the study for the year 1955. Total movement by PMT from Melrose was 67,106 units, of which 61,728 moved intrastate. The balance of 5,378 moved interstate.

With respect to Raymer, the total movement by PMT in 1956 was 108,845, of which all but 722 units moved intra-state. The interstate movement was to the port of Los Angeles and to Calexico and San Ysidro.

I believe that discharges my commitments to provide information of this character.

Exam. Linn: Unless the parties present have some challenge of the matter stated by counsel, they will be treated as though competently established.

Mr. Handler: I think counsel erred in his statement as to Richmond. It isn't too material since it isn't operated. There is one more railroad at Richmond, I am advised.

Mr. Johnson: At Richmond?

Mr. Handler: Yes. The Southern Pacific and the Santa Fe.

Mr. Johnson: It is our understanding they were actually on the tracks of the Santa Fe.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

[fol. 702] Mr. Johnson: I accept the correction with respect to the Richmond plant which was deactivated.

Mr. Handler: I believe we still have left, Mr. Examiner, the question as to a late filed exhibit with stipulation, if this is the appropriate time to raise that point.

Probably Mr. Johnson could more adequately state it than I could since he talked directly to counsel.

Mr. Johnson: I rather hate to make the statement for Mr. Bieneman. That is one reason why I suggested that you talk to him, so that you could represent him.

Exam. Linn: I wonder if we can go off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Mr. Handler: Mr. Examiner, at this time I should like to request on behalf of certain counsel for protestants who are no longer in attendance at the hearing the right on their part to file late filed exhibits, accompanied by stipulations with Mr. Johnson, who represents the applicant, specifically on behalf of counsel Louis Smith for his client, that he be

permitted to file within two weeks from today the copies of the operating rights, equipment facilities and methods of operation which would be utilized by his client in performing service within the scope of the application.

Exam. Linn: Kenosha Auto Transport and Western Auto Transport?

Mr. Handler: I understand those are the two for whom he [fol. 703] entered an appearance.

Mr. Johnson: And the willingness of those carriers to provide the service.

Mr. Handler: Correct; either in initial movement where they may have such authority or interline service in secondary operations otherwise.

On behalf of Walter Bieneman, representing the National Automobile Transporters Association, that he be permitted to file a late filed exhibit, accompanied by stipulation with Mr. Johnson representing the applicant, two weeks from this date in Washington; an exhibit showing the existing railways from San Francisco and Los Angeles origin territory to representative points involved in this application; a copy of a petition for suspension filed by him on behalf of certain motor carriers to proposed railway deductions from California points to Arizona, and a copy of the reply submitted on behalf of the rail lines through agent Haines of South Pacific Coast Freight Bureau, and a statement of the position of the National Automobile Transporters Association.

Now, it is further my understanding that within one week approximately these documents, accompanied by a proposed stipulation will be submitted to Mr. Johnson, thereafter filed in Washington and properly executed, with Mr. Johnson reserving such objections to the introduction of any of these documents as he may feel appropriate. How- [fol. 704] ever, the documents will be submitted with such objection so that the full file will be before the Commission, and I assume that both counsel will submit copies of these exhibits and stipulations to all parties of record.

Mr. Johnson: That is a correct statement. I have agreed to enter into this stipulation as an accommodation to these counsel.

Exam. Linn: The exhibits specified may be filed after the close of the hearing to be due at the Commission's office on or prior to March 10, 1957.

Are there any further matters to require attention or any further evidence on behalf of either protestants or applicant?

Mr. Johnson: No.

Well, there is a question that has been discussed informally by counsel with respect to a brief. Applicant desires to submit a brief, and we suggest 60 days from this date.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

The concurrent briefs in this matter will be due at the Commission's office on or about April 20, 1957.

If there is nothing further the hearing is now closed.

(Whereupon, at 4:03 p.m., the hearing in the above-entitled matter was closed.)

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VOLUME II

# TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1959

No. 74

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AMERICAN TRUCKING ASSOCIATIONS, INC.,  
ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FILED MAY 22, 1959

PROBABLE JURISDICTION NOTED OCTOBER 12, 1959



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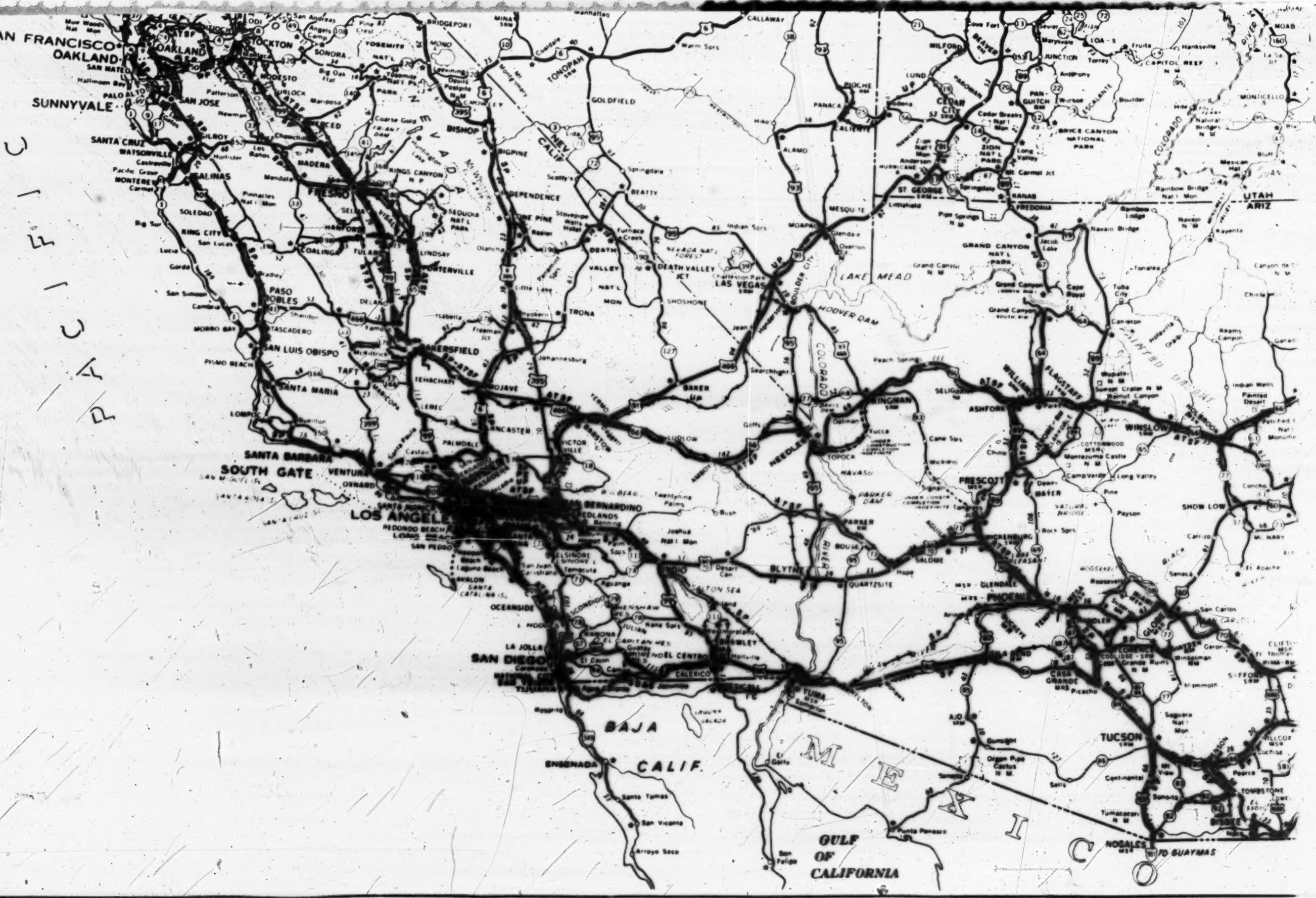
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Applicant's Exhibit No. 32—Southern Pacific Company—Statement showing transit time on shipments of motor vehicles transported by rail from South Gate and Raymer, California during the period January 14 to 25, 1957, inclusive, also shown is the transit time between the same points by Pacific Motor Trucking Company, as set forth on Exhibit No. 8 .....	736	517
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Applicant's Exhibit No. 35—Pacific Motor Trucking Company—Statement of Contract Carrier operations for General Motors Corporation covering period January 1, 1953 to November 30, 1956 .....	740	525
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Applicant's Exhibit No. 36—Pacific Motor Trucking Company—Operating Ratio—Contract Carrier Operations for General Motors Corporation .....	745	530
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Applicant's Exhibit No. 37—Pacific Motor Trucking Company Investment as of December 31, 1956 in facilities used in Contract Carrier Operations for General Motors Corporation .....	746	531
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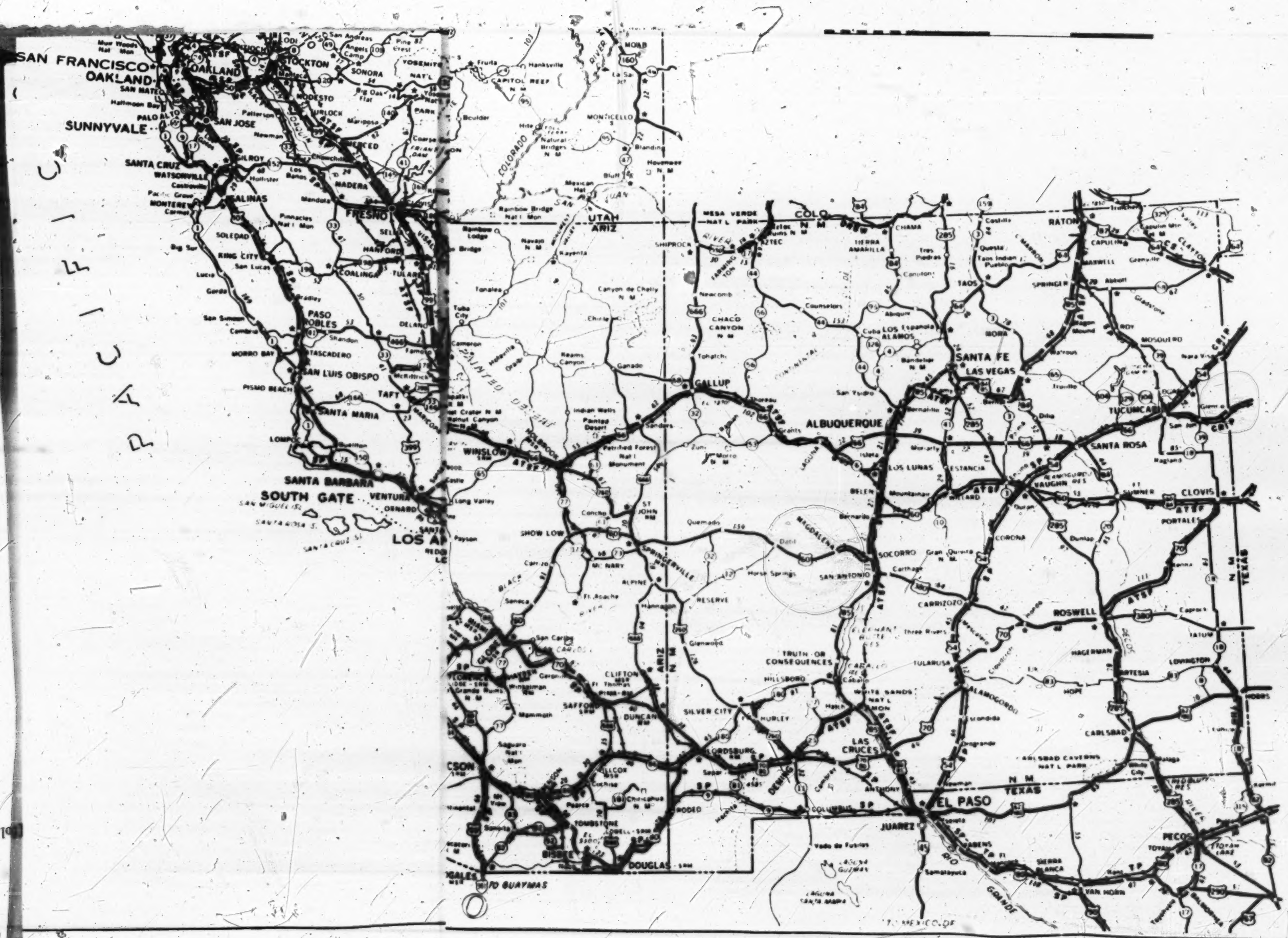
Applicant's Exhibit No. 38—Automotive Units Transported by Pacific Motor Trucking Company and Gross Freight Revenues from Contract Carrier Operations with General Motors Corporation .....	747	532
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Proceedings before the Interstate Commerce Commission—Continued

Plaintiff's Exhibit 3—Continued

Protestant's Exhibit No. 45—Statement showing number of carloads and tons, together with division of freight revenue, on automobiles originating in the State of California and terminating at stations on the S.P. & S. Ry. Co., O. E. Ry. Co. and O.T. Ry. in the states of Oregon and Washington for the year 1956	748	533
Protestant's Exhibit No. 46—Exhibit showing time in transit of carloads of automobiles shipped from California origins to Destination on the Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company and Oregon Trunk Railway for The Seven Day Period October 7 to October 13, 1956 incl.	749	534
Protestant's Exhibit No. 50—Index page, map indicating locations of auto unloading docks, and recapitulation sheet for 1956 showing number of freight cars of automobiles handled by Bamberger Company from Raymer, Oakland and South Gate, California, total freight involved, and Bamberger's division thereof	750	535
Protestant's Exhibit No. 51—Map of the system of the Portland Traction Company showing the various interchange points, with connections, etc.	753	539
Protestant's Exhibit No. 55—Statement showing number of carloads and tons, together with Portland Traction Company (Portland Railroad and Terminal Division), etc.	754	541
Protestant's Exhibit No. 56—Exhibit showing time in transit of carloads of automobiles shipped from California origins to destinations on the Portland Traction Company, etc.	755	542
Protestant's Exhibit No. 60—Cover page and index	759	546





Proceedings before the Interstate Commerce Commission—Continued

Plaintiff's Exhibit 3—Continued

Protestant's Exhibit No. 60—Continued

Part F—Union Pacific Railroad Company—  
Statement of one week period August 1,  
1956 to August 7, 1956 incl. of shipments  
of involved traffic originating in California  
to points on other lines in destination  
states involved, etc.

761 548

Protestant's Exhibit No. 62—Union Pacific  
Railroad Company—Volume of Traffic of  
New Automobiles, Trucks and Buses, etc.

763 550

Protestant's Exhibit No. 63—Union Pacific  
Railroad Company—Volume of Traffic of  
New Automobiles, Trucks and Buses, etc.

764 551

Protestant's Exhibit No. 70—Map of Northern  
Pacific Railway

765 553

Protestant's Exhibit No. 73—Northern Pacific  
Railway Company, Office General Superin-  
tendent Transportation, Time and Transit  
Study of Passenger Automobiles and Trucks  
shipped Out, etc.

766 555

Protestant's Exhibit No. 77—Northern Pacific  
Railway Company Carloads of Automobiles,  
etc.

772 561

Protestant's Exhibit No. 84—Map of the United  
States on which the territory served by the  
Great Northern Railway is shown in heavy  
red lines from St. Paul to the West Coast

773 563

Protestant's Exhibit No. 88—Title page, and  
index page and Schedule L—Cars, tons and  
G. N. Revenue of Passenger and Freight  
Automobiles originated in California and  
Terminated in the indicated states—year  
1955

774 565

Protestant's Exhibit No. 93—Operating Au-  
thority of Transport Storage and Distribut-  
ing Co., No. MC-108121

777 568

Protestant's Exhibit No. 98—Certificates of  
Public Convenience and Necessity, Robert-  
son Truck-A-Ways, Inc., Los Angeles, Cali-  
fornia

778 569

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Plaintiff's Exhibit 3—Continued		
Protestant's Exhibit No. 99—List of equipment of Robertson Truck-A-Ways, Inc.	785	577
Protestant's Exhibit No. 100—Map of the United States for Robertson Truck-A-Ways, Inc.—Automobiles and trucks initial authority from Los Angeles	792	585
Protestant's Exhibit No. 101—Map of the United States for Robertson Truck-A-Ways, Inc.—Trucks in secondary from within 20 miles of San Leandro to eleven western states	793	586
Protestant's Exhibit No. 102—Robertson Truck-A-Ways, Inc., Balance Sheet as of December 31, 1956	794	587
Protestant's Exhibit No. 103—Robertson Truck-A-Ways, Inc., Initial Traffic from Los Angeles to Arizona, Nevada and Oregon	795	588
Protestant's Exhibit No. 104—Robertson Truck-A-Ways, Inc., Shipments from Van Nuys Plant, Van Nuys, California	796	589
Protestant's Exhibit No. 105—Letter from Interstate Commerce Commission to Robertson Truck-A-Ways, Inc., dated July 3, 1956	798	591
Protestant's Exhibit No. 106—Certificate of Public Convenience and Necessity for Dallas & Mavis Forwarding Co., Inc., South Bend, Indiana	800	593
Protestant's Exhibit No. 107—Permit of Hadley Auto Transport, a Corporation, Long Beach, California	801	594
Protestant's Exhibit No. 108—Outline map of the United States showing States served by Hadley Auto Transport, etc.	806	599
Protestant's Exhibit No. 109—Hadley Auto Transport, List of Company owned equipment as of February 1, 1957, etc.	807	600

**Proceedings before the Interstate Commerce Commission—Continued**

**Plaintiff's Exhibit 3—Continued.**

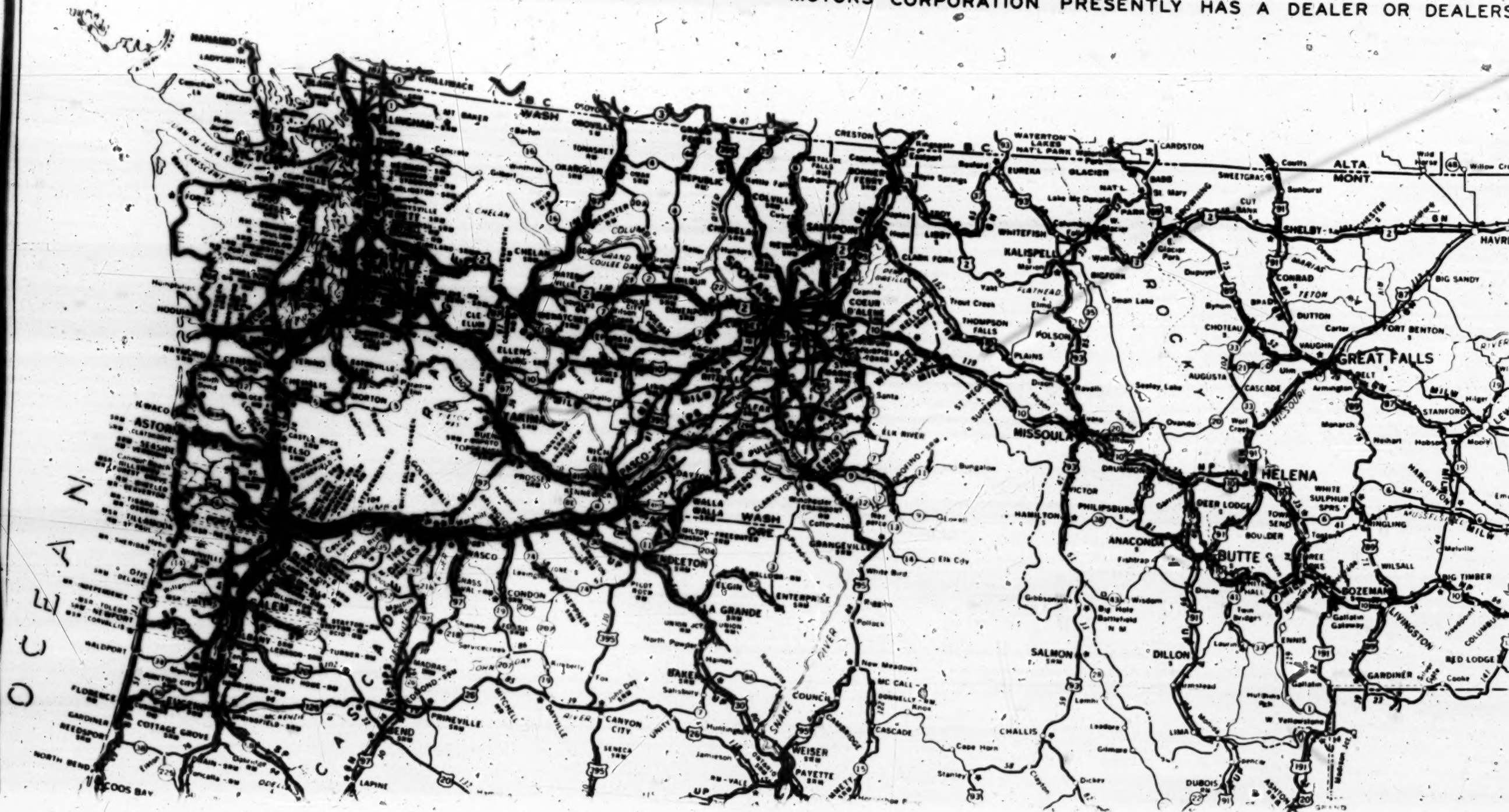
Protestant's Exhibit No. 110—List of Cities served by Hadley Auto Transport in the States of Arizona, Idaho, Nevada, New Mexico, Utah and Montana	811	604
Protestant's Exhibit No. 111—Vehicles transported by Hadley Auto Transport from Los Angeles County, etc.	812	605
Protestant's Exhibit No. 112—Hadley Auto Transport Balance Sheet, December 31, 1956	813	606
Applicant's Exhibit No. 113—Equipment owned, operated and assigned by Pacific Motor Trucking Company, etc.	814	607
Protestant's Exhibit No. 114—Certificates of Public Convenience and Necessity, Convoy Company, MC 52858	822	615
Protestant's Exhibit No. 115—Convoy Company—List of Terminal Stations	827	620
Protestant's Exhibit No. 116—Convoy Company List of Equipment, November 20, 1956	829	622
Protestant's Exhibit No. 117—Convoy Company Safety Program	838	631
Protestant's Exhibit No. 118—Convoy Company Balance Sheet as at December 31, 1956	841	635
Protestant's Exhibit No. 119—Convoy Company Profit and Loss Statement, ending December 31, 1956	842	636
Protestant's Exhibit No. 121—David T. Hamilton and James D. Boner, a Partnership, Doing Business as B & H Truckaway Company, Maywood, California, Permit No. MC-107230 and Permit No. MC-107230—Sub 4	843	637
Applicant's Exhibit No. 123—Rail shipments by Southern Pacific Company of Automobiles from South Gate, etc.	844	639
Applicant's Exhibit No. 124—Rail shipments by Southern Pacific Company of Automobiles from Raymer, etc.	850	645
Applicant's Exhibit No. 125—Rail shipments by Southern Pacific Company of Automobiles from Oakland, California, etc.	855	650



# PACIFIC MOTOR TRUCKING COMPANY

## MAP SHOWING

POINTS IN STATES PROPOSED TO BE SERVED AT WHICH GENERAL  
MOTORS CORPORATION PRESENTLY HAS A DEALER OR DEALERS



11 604

12 605

13 606

14 607

22 615

27 620

9 622

38 631

1 635

2 636

3 637

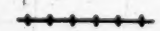
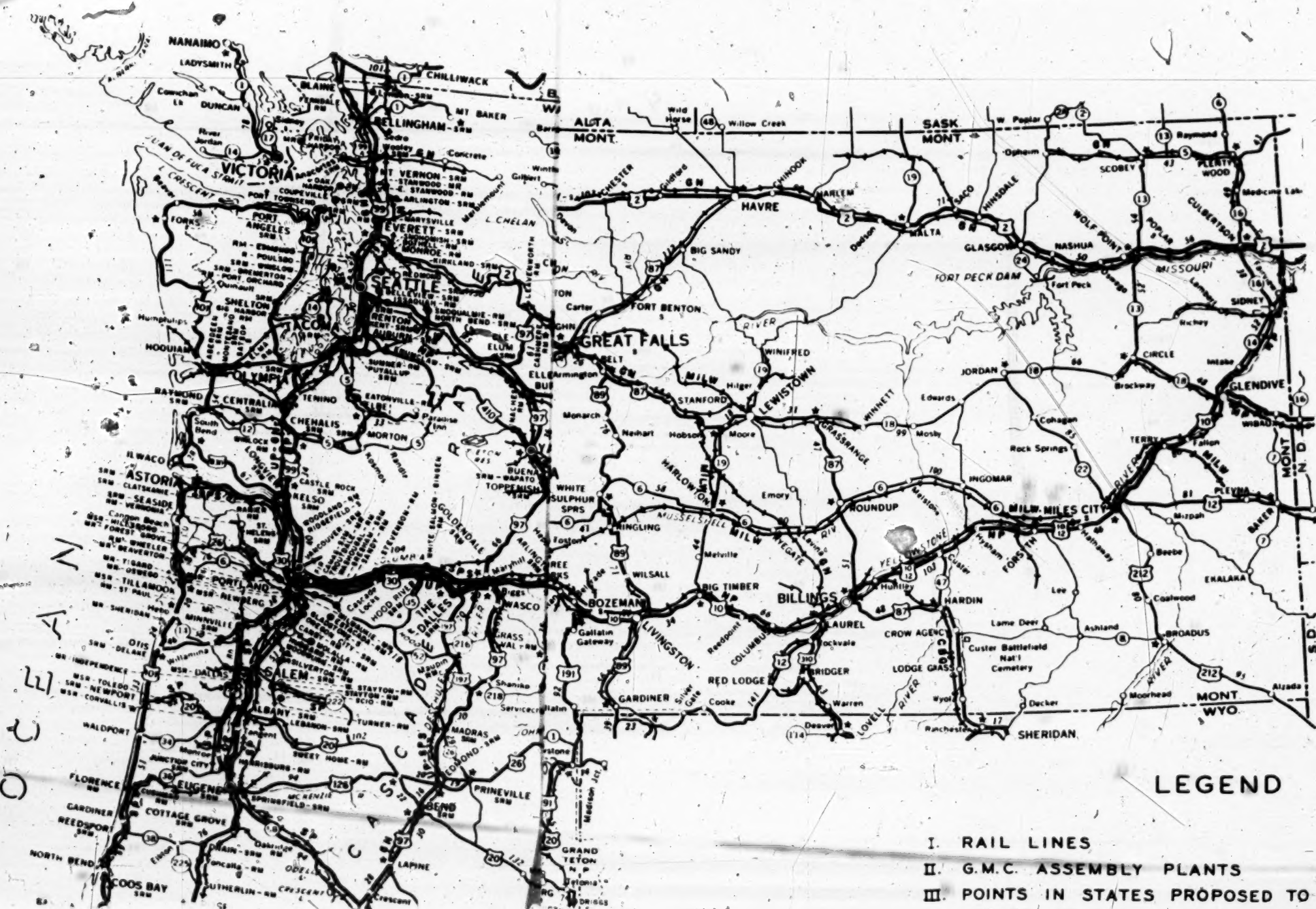
639

645

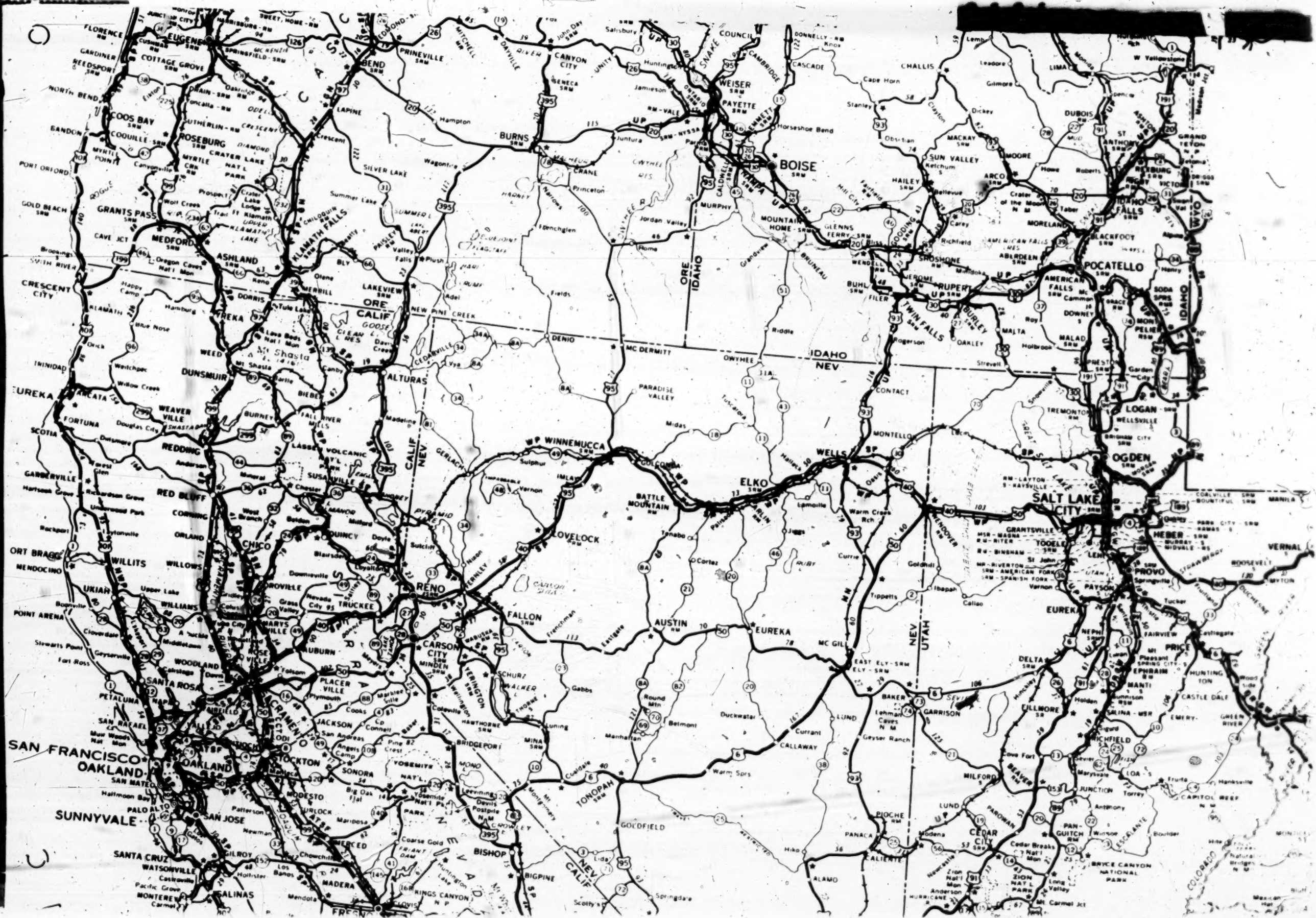
650



## COMPANY

WHICH GENERAL  
LER OR DEALERS










## APPLICANT'S EXHIBIT 4

(See Opposite) 

PMT PAVED STORAGE SPACE

FOOTHILL

RESIDENTIAL

69<sup>TH</sup>

AVE

EMPLOYEE'S  
PARKING LOT

EMPLOYEE'S  
PARKING LOT

BLVD

VISITOR'S PARKING AREA

LIGHT INBOUND DELIVERY  
GATE  
GATE

ADMINISTRATION  
Bldg.

SERVICE  
AREA

TEST TRACK AND STORAGE

INSP. RACK

SERVICE SHED

BUILDING

CHEVROLET-OAKLAND

REET

PAVED

STORAGE

FINISHED PRODUCTS

LOADING PLATFORM

PLATFORM

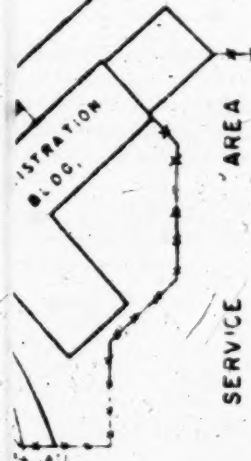
ASSEMBLY

PLATFORM

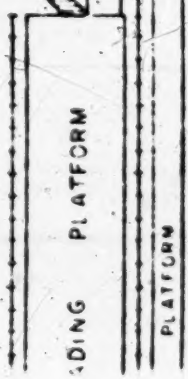


HILLSIDE AVE.

LAWN

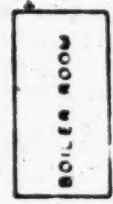


VISHED PRODUCTS



BUILDING

CHEVROLET-OAKLAND  
DIVISION  
GENERAL MOTORS CORPORATION



BUILDING

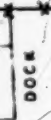
ASSEMBLY



PLANT

BODY

FISHER



JIG STORAGE, ETC.



AVENUE

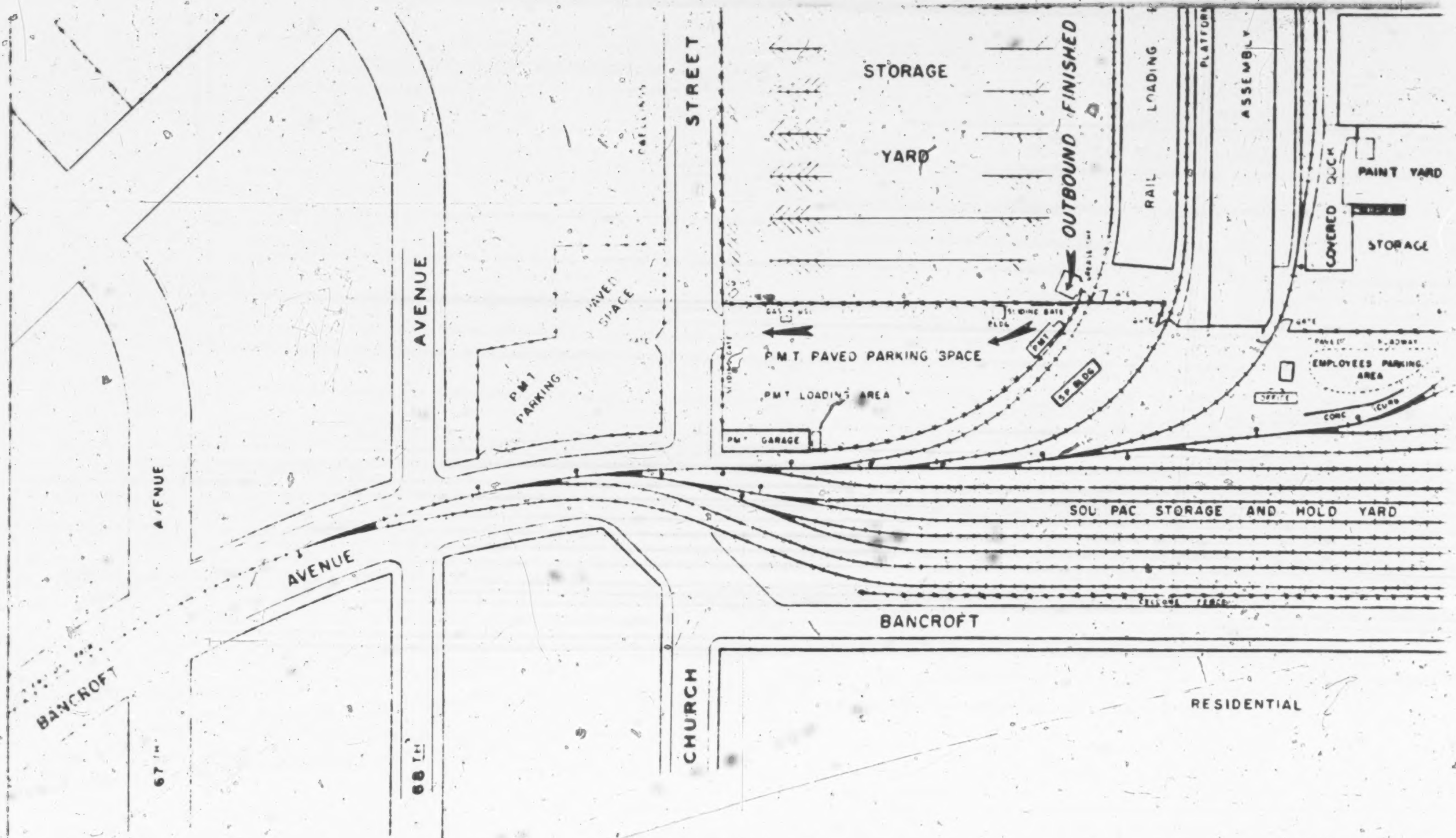
RESIDENTIAL

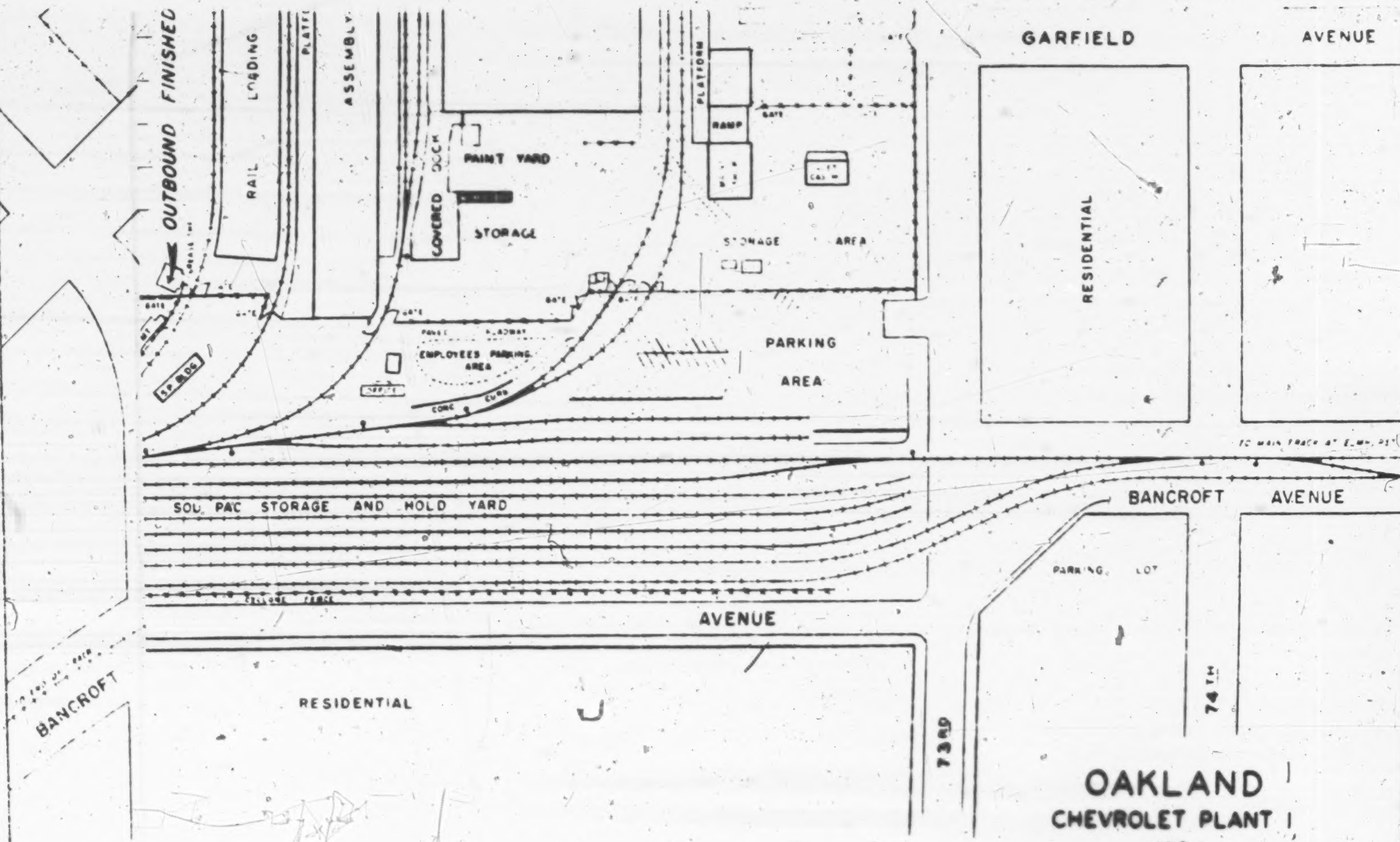
AVENUE

GARFIELD

AVENUE







GARFIELD AVENUE

RESIDENTIAL

TO MAIN TRACK AT E. 11th St.

BANCROFT AVENUE

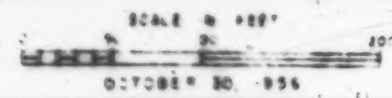
PARKING LOT

74th

73rd


RESIDENTIAL

**OAKLAND  
CHEVROLET PLANT  
AND  
SOUTHERN PACIFIC COMPANY  
PACIFIC MOTOR TRUCKING COMPANY  
TRANSPORTATION FACILITIES**





APPLICANT'S EXHIBIT 6

(See Opposite) 

F.O.C. Docket MC-78787, Sub. No. 87

Exhibit No. 6

Witness Booth



APPLICANT'S EXHIBIT 5

(See Opposite) 


F.O.C. Docket MC-78787, Sub. No. 87

Exhibit No. 5

Witness Booth



APPLICANT'S EXHIBIT 8

(See Opposite) 

[fol. 709]

Sheet 1 of 7 sheets

PACIFIC MOTOR TRUCKING COMPANY

**TRUCKAWAY TRANSIT TIME (DAYS) TO POINTS  
IN STATES PROPOSED TO BE SERVED  
FROM GENERAL MOTORS CORPORATION PLANTS IN CALIFORNIA**

Point	From GMC	From GMC	From GMC
	Chevrolet Oakland Melrose Plant	Chevrolet Van Nuys - Raymer Plant	BOP South Gate Plant
1. Aberdeen, Ida.	2	3	3
2. Aberdeen, Wash.	2	3	3
3. Ajo, Ariz.	2	3	3
4. Albany, Ore.	*	2	2
5. Almira, Wash.	3	3	3
6. American Falls, Ida.	2	2	2
7. American Fork, Utah	2	2	2
8. Anaconda, Mont.	*	*	*
9. Anacortes, Wash.	2	2	2
0. Arco, Ida.	2	2	2
1. Arlington, Ore.	2	2	2
2. Arlington, Wash.	2	2	2
3. Ashland, Ore.	*	2	2
4. Ashton, Ida.	2	2	2
5. Astoria, Ore.	2	2	2
6. Auburn, Wash.	2	2	2
7. Austin, Nev.	*	2	2
8. Baker, Ore.	2	2	2
9. Battle Mountain, Nev.	*	2	2
0. Beaver, Utah	2	2	2
1. Beaverton, Ore.	*	2	2
2. Bellevue, Wash.	2	2	2
3. Bellingham, Wash.	3	2	2
4. Bend, Ore.	3	2	2
5. Benson, Ariz.	2	2	2
6. Bingham, Utah	2	2	2
7. Blackfoot, Ida.	2	2	2
8. Boise, Ida.	2	2	2
9. Bonner's Ferry, Ida.	3	2	2
0. Bothell, Wash.	2	2	2
1. Bountiful, Utah	2	2	2
2. Bozeman, Mont.	*	2	2
3. Bremerton, Wash.	2	2	2
4. Browster, Wash.	2	2	2
5. Brigham City, Utah	2	2	2
6. Brookings, Ore.	2	2	2
7. Buckeye, Ariz.	2	2	2
8. Buhl, Ida.	2	2	2
9. Burley, Ida.	2	2	2
0. Burns, Ore.	2	2	2
1. Butte, Mont.	2	2	2
2. Caldwell, Ida.	2	2	2
3. Camas, Wash.	2	2	2
4. Canby, Ore.	*	2	2
5. Carlin, Nev.	*	2	2
6. Carson City, Nev.	*	2	2
7. Casa Grande, Ariz.	2	2	2
8. Cashmere, Wash.	2	2	2
9. Castle Rock, Wash.	2	2	2
0. Cedar City, Utah	2	2	2
1. Centralia, Wash.	2	2	2
2. Chehalis, Wash.	2	2	2

709



53. Chelan, Wash.
54. Cheney, Wash.
55. Chester, Mont.
56. Chewelah, Wash.
57. Chiloquin, Ore.
58. Chotau, Mont.
59. Clarkdale, Ariz.
60. Clatskanie, Ore.
61. Cle Elum, Wash.
62. Clifton, Ariz.
63. Coalville, Utah
64. Coeur d'Alene, Ida.
65. Colfax, Wash.
66. Colville, Wash.
67. Condon, Ore.
68. Conrad, Mont.
69. Coolidge, Ariz.
70. Coos Bay, Ore.
71. Coquille, Ore.
72. Corvallis, Ore.
73. Cottage Grove, Ore.
74. Cottonwood, Ariz.
75. Coulee City, Wash.
76. Coupsville, Wash.
77. Craigmont, Ida.
78. Cushman, Ore.
79. Cut Bank, Mont.
80. Dallas, Ore.
81. Davonport, Wash.
82. Dayton, Wash.
83. Deer Lodge, Mont.
84. Deer Park, Wash.
85. De Lake, Ore.
86. Delta, Utah.
87. Dillon, Mont.
88. Dishman, Wash.
89. Donnelly, Ida.
90. Douglas, Ariz.
91. Douglas, Wash.
92. Downey, Ida.
93. Drain, Ore.
94. Driggs, Ida.
95. Dubois, Ida.
96. Duncan, Ariz.
97. East Ely, Nev.
98. East Stanwood, Wash.
99. Eatonville, Wash.
100. Edmonds, Wash.
101. Elko, Nev.
102. Ellensburg, Wash.
103. Elma, Wash.
104. Ely, Nev.
105. Emmett, Ida.
106. Enterprise, Ore.
107. Enusclaw, Wash.
108. Ephraim, Utah
109. Ephrata, Wash.
110. Estacada, Ore.
111. Eugene, Ore.
112. Everett, Wash.
113. Fairfield, Ida.
114. Fairfield, Wash.
115. Fallon, Nev.
116. Ferndale, Wash.
117. Fillmore, Utah
118. Fir, Ore.
119. Flagstaff, Ariz.
120. Florence, Ore.

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Sheet 3 of 7 sheets

121. Forest Grove, Ore.
122. Fort Benton, Mont.
123. Fossil, Ore.
124. Friday Harbor, Wash.
125. Gila Bend, Ariz.
126. Gig Harbor, Wash.
127. Girdstone, Ore.
128. Glendale, Ariz.
129. Glon's Ferry, Ida.
130. Globe, Ariz.
131. Gold Beach, Ore.
132. Goldendale, Wash.
133. Gooding, Ida.
134. Grace, Ida.
135. Grand Coulee, Wash.
136. Grandview, Wash.
137. Grangerville, Ida.
138. Grants Pass, Ore.
139. Grass Valley, Ore.
140. Great Falls, Mont.
141. Grosham, Ore.
142. Gunnison, Utah.
143. Hailoy, Ida.
144. Hamilton, Mont.
145. Harrisburg, Ore.
146. Hawthorne, Nev.
147. Haydon, Ariz.
148. Heber, Utah
149. Helena, Mont.
150. Hoppner, Ore.
151. Hermiston, Ore.
152. Hillsboro, Ore.
153. Holbrook, Ariz.
154. Hood River, Ore.
155. Hubbard, Ore.
156. Huntington, Ore.
157. Hurricane, Utah
158. Idaho Falls, Ida.
159. Independence, Ore.
160. Iona, Ore.
161. Issaquah, Wash.
162. Jerome, Ariz.
163. Jerome, Ida.
164. John Day, Ore.
165. Junction City, Ore.
166. Kalispell, Mont.
167. Kamas, Utah
168. Kaysville, Utah
169. Kellogg-Wardner, Ida.
170. Kelso, Wash.
171. Kent, Wash.
172. Ketchum, Ida.
173. Kingman, Ariz.
174. Kirkland, Wash.
175. Klamath Falls, Ore.
176. La Grande, Ore.
177. Lakeview, Ore.
178. Las Vegas, Nev.
179. Layton, Utah
180. Leavenworth, Wash.
181. Lebanon, Ore.
182. Lewiston, Ida.
183. Libby, Mont.
184. Lind, Wash.
185. Loa, Utah
186. Logan, Utah
187. Longview, Wash.
188. Lordsburg, New Mexico

189. Lovelock, Nev.
190. Lowell, Ariz.
191. Lyndon, Wash.
192. Mackay, Ida.
193. Madras, Ore.
194. Magna, Utah
195. Maind City, Ida.
196. Mantl, Utah
197. Marysville, Wash.
198. Maupin, Ore.
199. McCall, Ida.
200. McMinnaville, Ore.
201. Modford, Ore.
202. Mose, Ariz.
203. Metalino Falls, Wash.
204. Miami, Ariz.
205. Midvale, Utah
206. Milos City, Mont.
207. Milford, Utah
208. Milton-Freewater, Ore.
209. Milwaukee, Ore.
210. Mina, Nev.
211. Minden, Nev.
212. Missoula, Mont.
213. Mitchell, Ore.
214. Molalla, Ore.
215. Monroo, Wash.
216. Montosano, Wash.
217. Monticello, Utah
218. Montpelier, Ida.
219. Morgan, Utah
220. Morton, Wash.
221. Moscow, Ida.
222. Moses Lake, Wash.
223. Mountain Home, Ida.
224. Mount Vernon, Wash.
225. Murray, Utah
226. Myrtle Creek, Ore.
227. Nachos, Wash.
228. Nampa, Ida.
229. Nephi, Utah
230. Newburg, Ore.
231. Newport, Ore.
232. Newport, Wash.
233. Nogales, Ariz.
234. North Bend, Wash.
235. Nyssa, Ore.
236. Oak Harbor, Wash.
237. Oakridge, Ore.
238. Odessa, Wash.
239. Ogdon, Utah
240. Okanogan, Wash.
241. Olympia, Wash.
242. Onak, Wash.
243. Ontario, Ore.
244. Oregon City, Ore.
245. Orofino, Ida.
246. Oroville, Wash.
247. Oswego, Ore.
248. Paisley, Ore.
249. Palouse, Wash.
250. Panguitch, Utah
251. Park City, Utah
252. Parker, Ariz.
253. Parma, Ida.
254. Pasco, Wash.
255. Payette, Ida.
256. Payson, Utah

[fol. 713]

Sheet 5 of 7 sheets

257. Pendleton, Oro.
258. Phillipsburg, Mont.
259. Phoenix, Ariz.
260. Pilot Rock, Oro.
261. Pima, Ariz.
262. Piocho, Nev.
263. Pocotillo, Ida.
264. Polson, Mont.
265. Pomoroy, Wash.
266. Poplar, Mont.
267. Port Angeles, Wash.
268. Portland, Oro.
269. Port Orchard, Wash.
270. Port Townsend, Wash.
271. Potlatch, Ida.
272. Poulsbo, Wash.
273. Proscott, Ariz.
274. Preston, Ida.
275. Price, Utah.
276. Priest River, Ida.
277. Princville, Oro.
278. Prosser, Wash.
279. Provo, Utah.
280. Pullman, Wash.
281. Puyallup, Wash.
282. Quincy, Wash.
283. Renier, Oro.
284. Raymond, Wash.
285. Redmond, Oro.
286. Roodsport, Oro.
287. Reno, Nev.
288. Renton, Wash.
289. Republic, Wash.
290. Rexburg, Ida.
291. Richfield, Utah.
292. Ridgefield, Wash.
293. Rigby, Ida.
294. Riter, Utah.
295. Ritzville, Wash.
296. Riverton, Utah.
297. Rockford, Wash.
298. Roosevelt, Utah.
299. Rosalia, Wash.
300. Roseburg, Ore.
301. Rupert, Ida.
302. Safford, Ariz.
303. Salem, Ore.
304. Salina, Utah.
305. Salmon, Ida.
306. Salt Lake City, Utah.
307. Sandpoint, Ida.
308. Sandy, Ore.
309. Satsop, Wash.
310. Scio, Ore.
311. Seaside, Ore.
312. Seattle, Wash.
313. Sedro Woolley, Wash.
314. Seligman, Ariz.
315. Seneca, Ore.
316. Shelby, Mont.
317. Shelton, Wash.
318. Sherman, Ore.
319. Shoshone, Ida.
320. Silverton, Ore.
321. Smelterville, Ida.
322. Snohomish, Wash.
323. Snoqualmie, Wash.
324. Soda Springs, Ida.

[fol. 714]

Shoot 6 of 7 sheets.

325.	Spokane, Wash.	2	3	3
326.	Spanish Fork, Utah	2	2	2
327.	Sprague, Wash.	2	2	2
328.	Spring City, Utah	2	2	2
329.	Springerville, Ariz.	2	2	2
330.	Springfield, Ore.	2	2	2
331.	St. Anthony, Ida.	2	3	3
332.	Stanwood, Wash.	2	2	2
333.	Stayton, Ore.	2	2	2
334.	Stevenson, Wash.	2	2	2
335.	St. George, Utah	2	1	1
336.	St. Helena, Ore.	2	3	3
337.	St. Johns, Ariz.	2	2	2
338.	St. Maries, Ida.	3	3	3
339.	St. Paul, Ore.	2	2	2
340.	Sumner, Wash.	2	3	3
341.	Sunnyside, Wash.	2	3	3
342.	Superior, Ariz.	2	1	1
343.	Sutherlin, Ore.	2	2	2
344.	Sweet Home, Ore.	2	2	2
345.	Tacoma, Wash.	2	3	3
346.	Tekoa, Wash.	2	3	3
347.	The Dalles, Ore.	2	2	2
348.	Thompson, Utah	3	3	3
349.	Thorne, Nev.	2	1	1
350.	Tigard, Ore.	2	3	3
351.	Tillamook, Ore.	2	3	3
352.	Toledo, Ore.	2	3	3
353.	Tonopah, Nev.	2	1	1
354.	Tonasket, Wash.	3	3	3
355.	Tooele, Utah	2	2	2
356.	Topponish, Wash.	2	3	3
357.	Tremonton, Utah	2	2	2
358.	Troutdale, Ore.	2	3	3
359.	Tucson, Ariz.	2	2	2
360.	Turner, Ore.	2	2	2
361.	Twin Falls, Ida.	2	2	2
362.	Twisp, Wash.	2	2	2
363.	Union, Ore.	2	3	3
364.	Union Jet., Ore.	2	3	3
365.	Vale, Ore.	2	3	3
366.	Vancouver, Wash.	2	3	3
367.	Vernal, Utah	2	2	2
368.	Vernonia, Ore.	2	3	3
369.	Wabaska, Nev.	2	1	1
370.	Wallace, Ida.	3	3	3
371.	Walla Walla, Wash.	2	3	3
372.	Walla, Ore.	2	3	3
373.	Wapato, Wash.	2	3	3
374.	Washougal, Wash.	2	3	3
375.	Washtucna, Wash.	2	3	3
376.	Waterville, Wash.	2	3	3
377.	Wendover, Utah	2	2	2
378.	Weiser, Ida.	2	3	3
379.	Wenatchee, Wash.	2	3	3
380.	Wendoll, Ida.	2	2	2
381.	West Stayton, Ore.	2	3	3
382.	Whooler, Ore.	2	3	3
383.	White Salmon, Wash.	2	1	1
384.	Wickonburg, Ariz.	2	3	3
385.	Wilbur, Wash.	2	3	3
386.	Willcox, Ariz.	2	1	1
387.	Williams, Ariz.	2	1	1
388.	Winkelman, Ariz.	2	1	1
389.	Winlock, Wash.	2	3	3
390.	Winemucca, Nev.	2	3	3
391.	Winslow, Ariz.	2	1	1
392.	Winslow, Wash.	2	3	3



[fol. 715]

- 393. Woodburn, Oro.
- 394. Woodland, Wash.
- 395. Y-kima, Wash.
- 396. Yerington, Nev.
- 397. Yoncalla, Oro.
- 398. Yuma, Ariz.

\*  
2  
2  
\*  
\*  
2

Sheet 7 of 7 sheets

2  
3  
3  
1  
2  
2  
\*

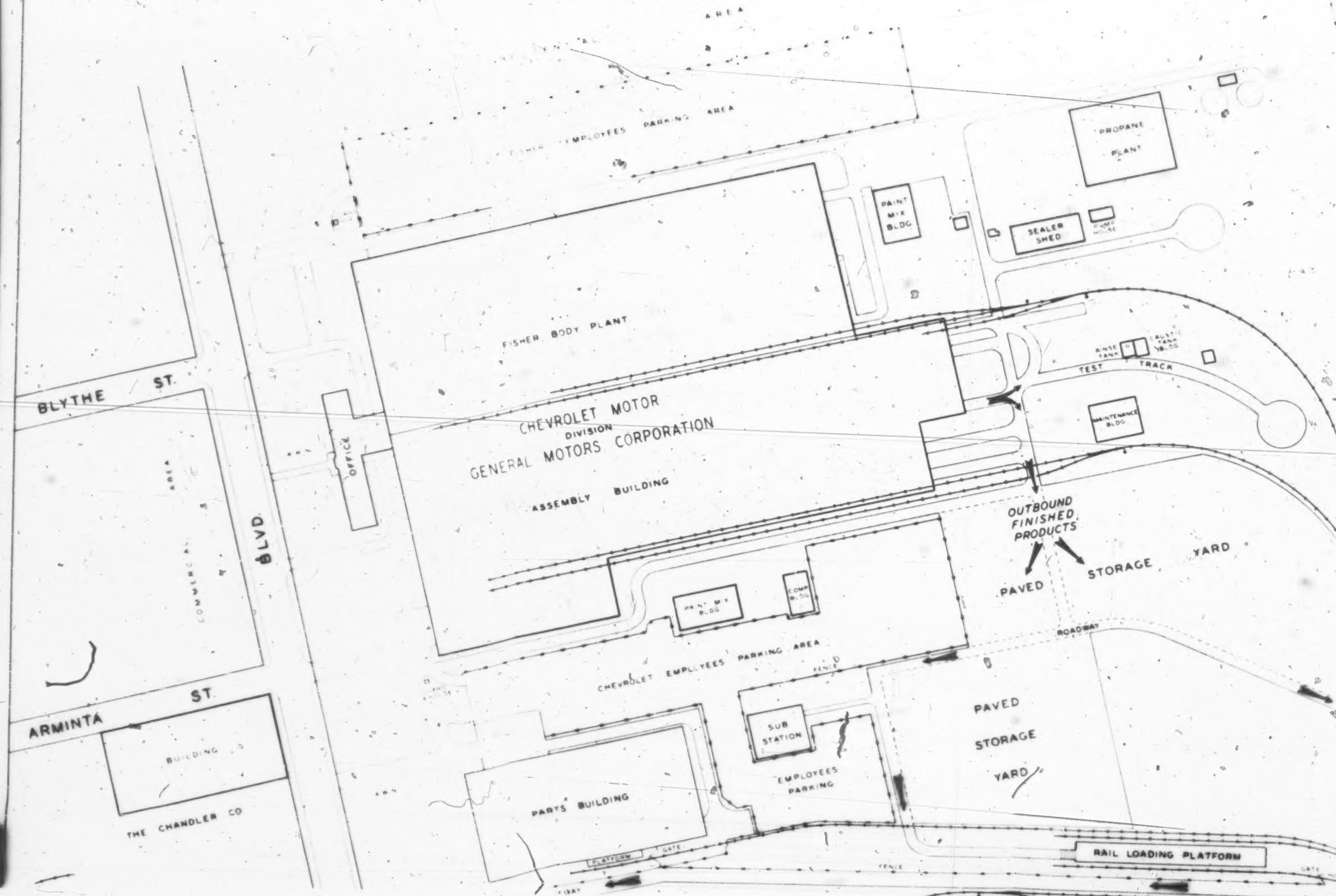
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1

Authority to serve point from indicated plant location is not  
sought by application MC-78787, Sub 37.

715

## APPLICANT'S EXHIBIT 9

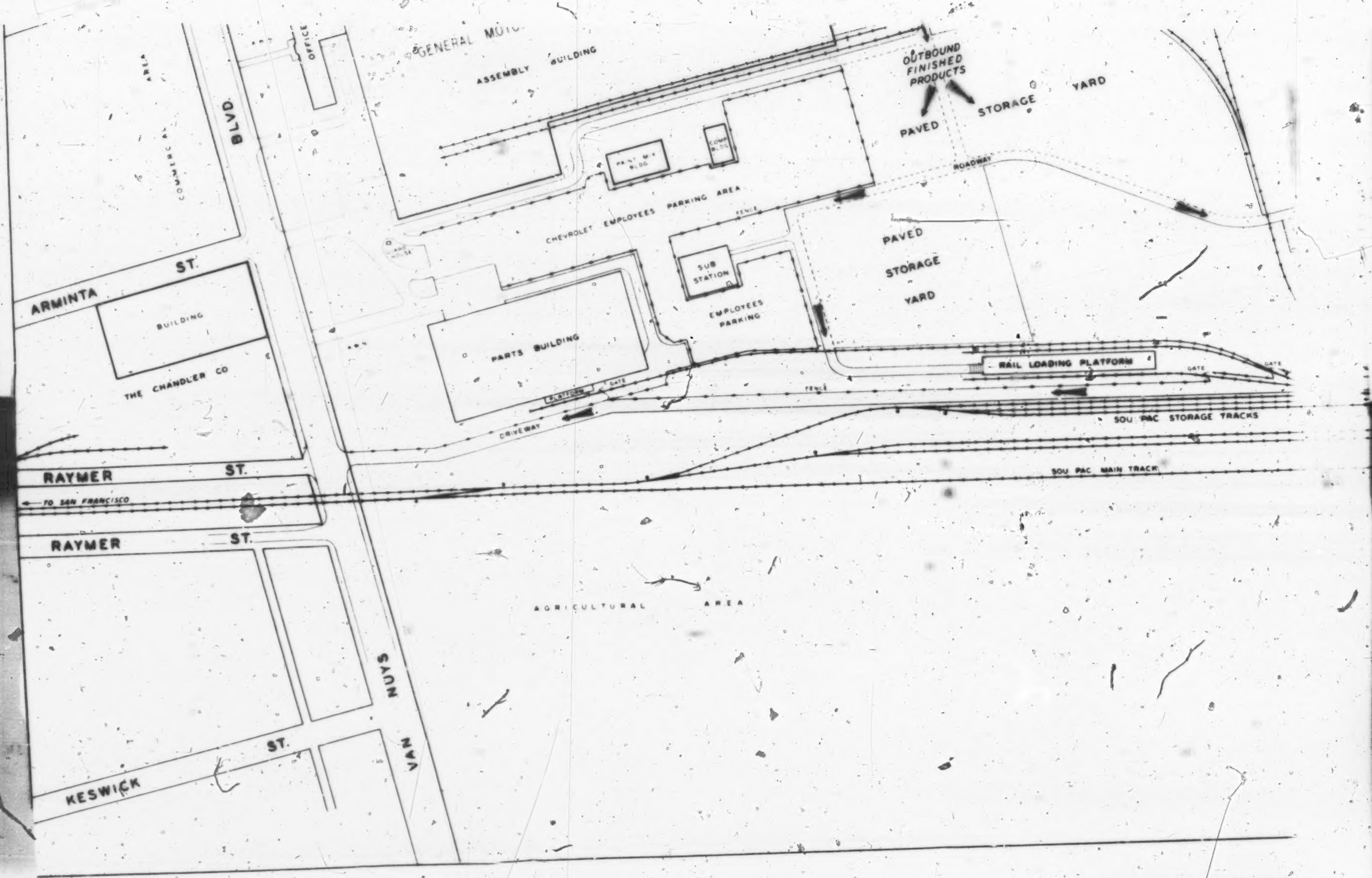
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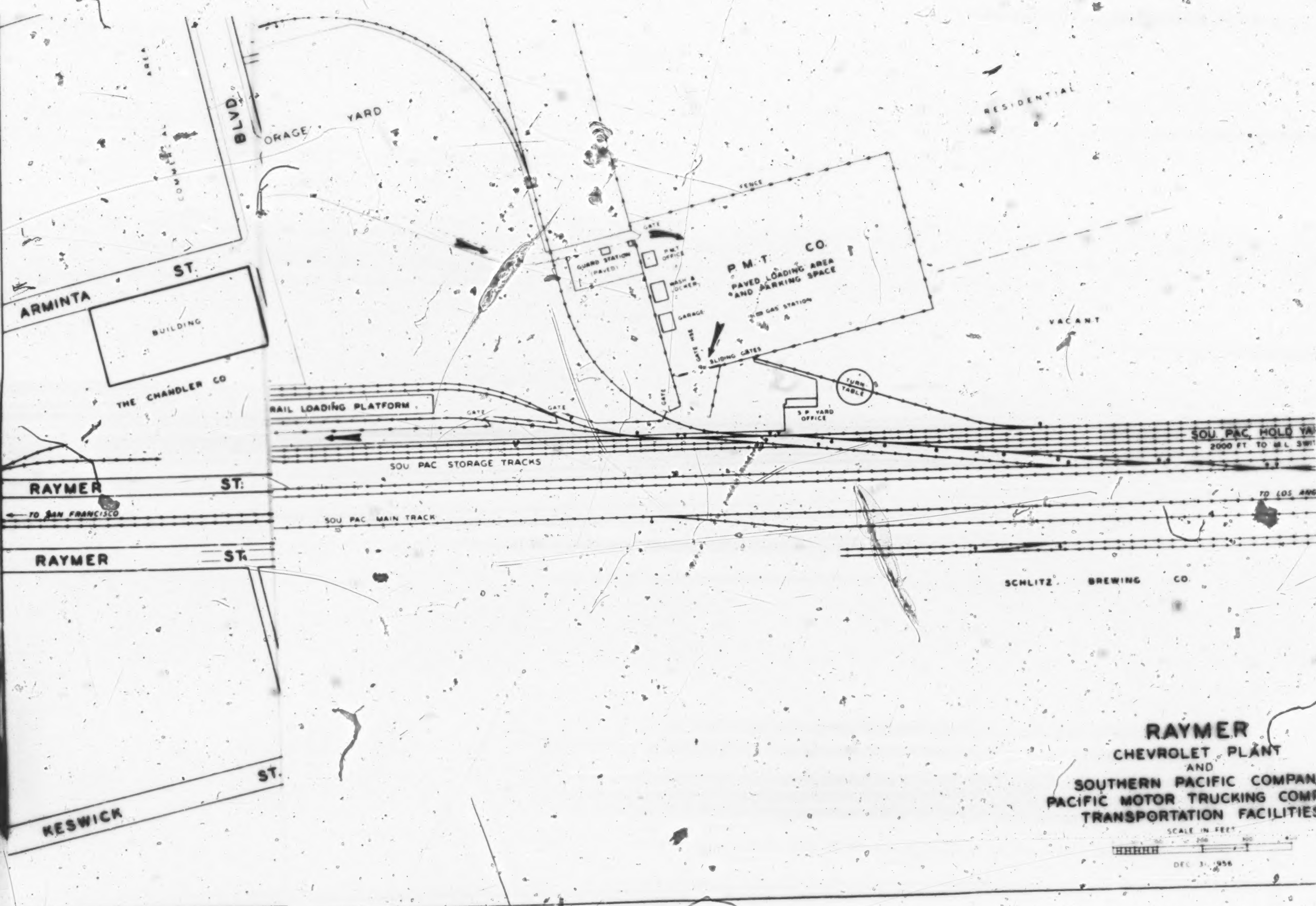


W F S









490

APPLICANT'S EXHIBIT 10

(See Opposite)

**RAYMER**  
CHEVROLET PLANT  
AND  
SOUTHERN PACIFIC COMPANY  
PACIFIC MOTOR TRUCKING COMPANY  
TRANSPORTATION FACILITIES

SCALE IN FEET  
0 100 200 300  
DEC. 31, 1956

I.C.C. Docket MC-78787, Sub. No. 37

Exhibit No. 10

Witness Booth





F.C.C. Docket MC-18157, Sub. No. 37

Exhibit No. 11

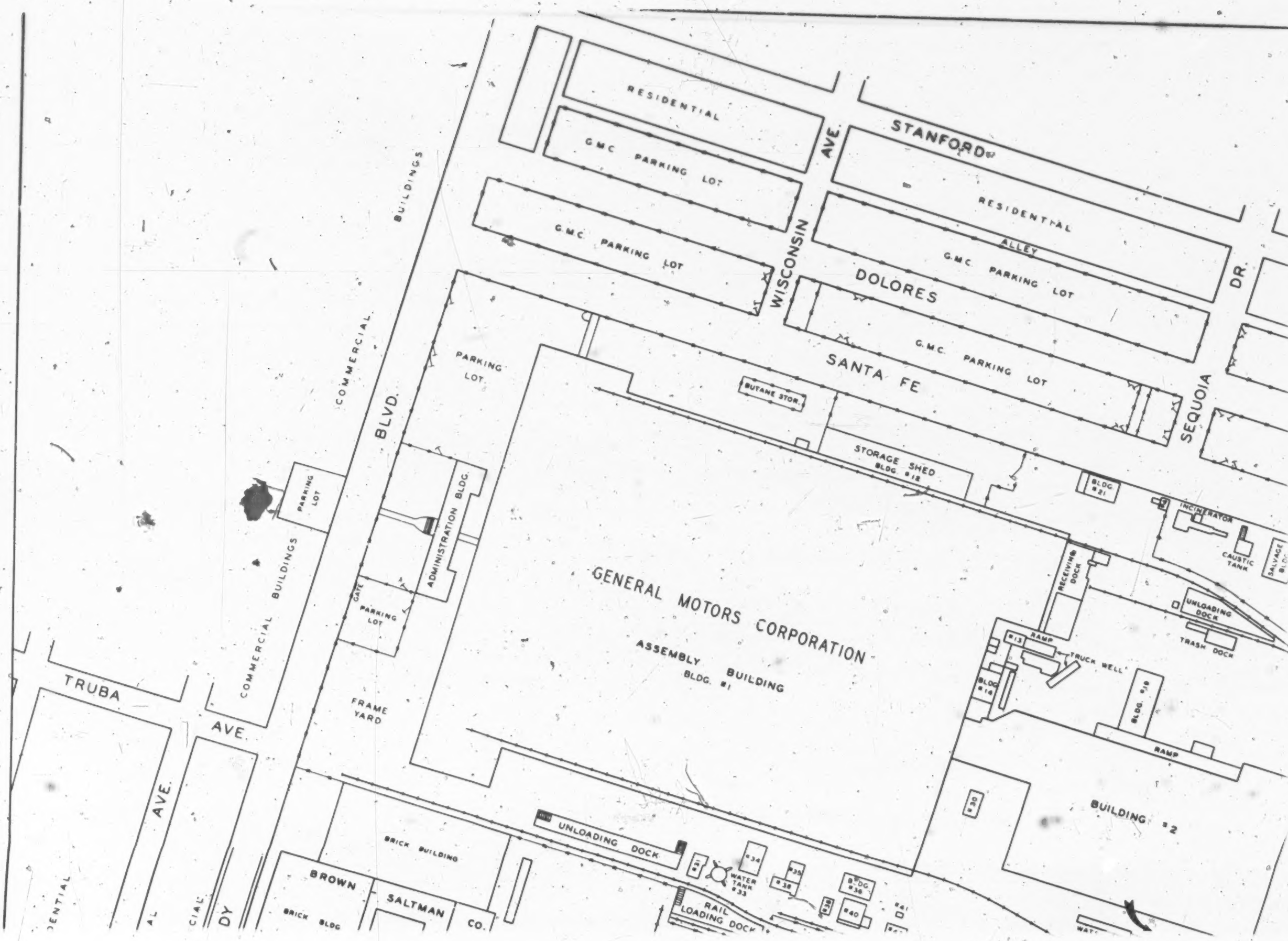
Witness Booth



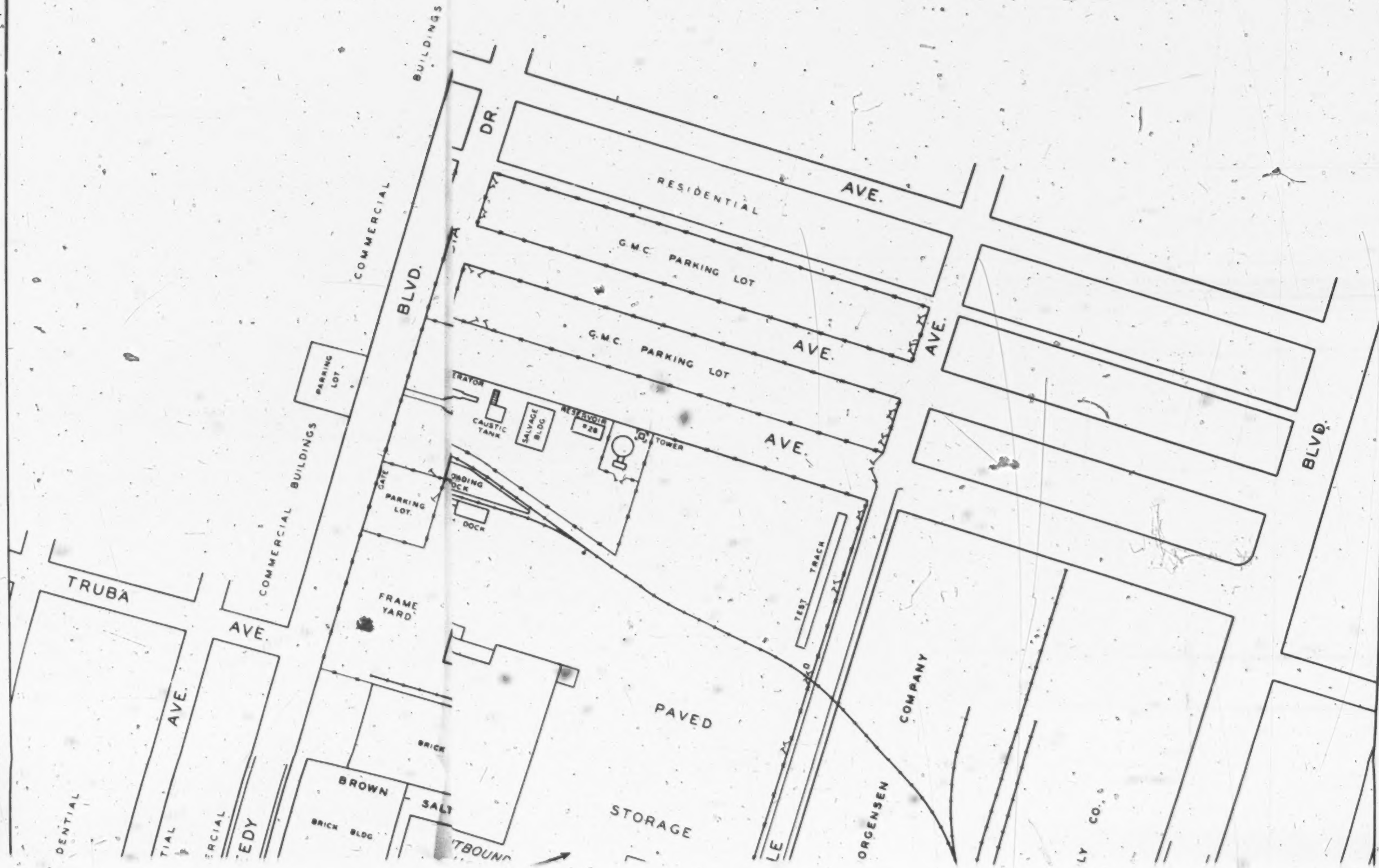
APPLICANT'S EXHIBIT 12

(See Opposite)  

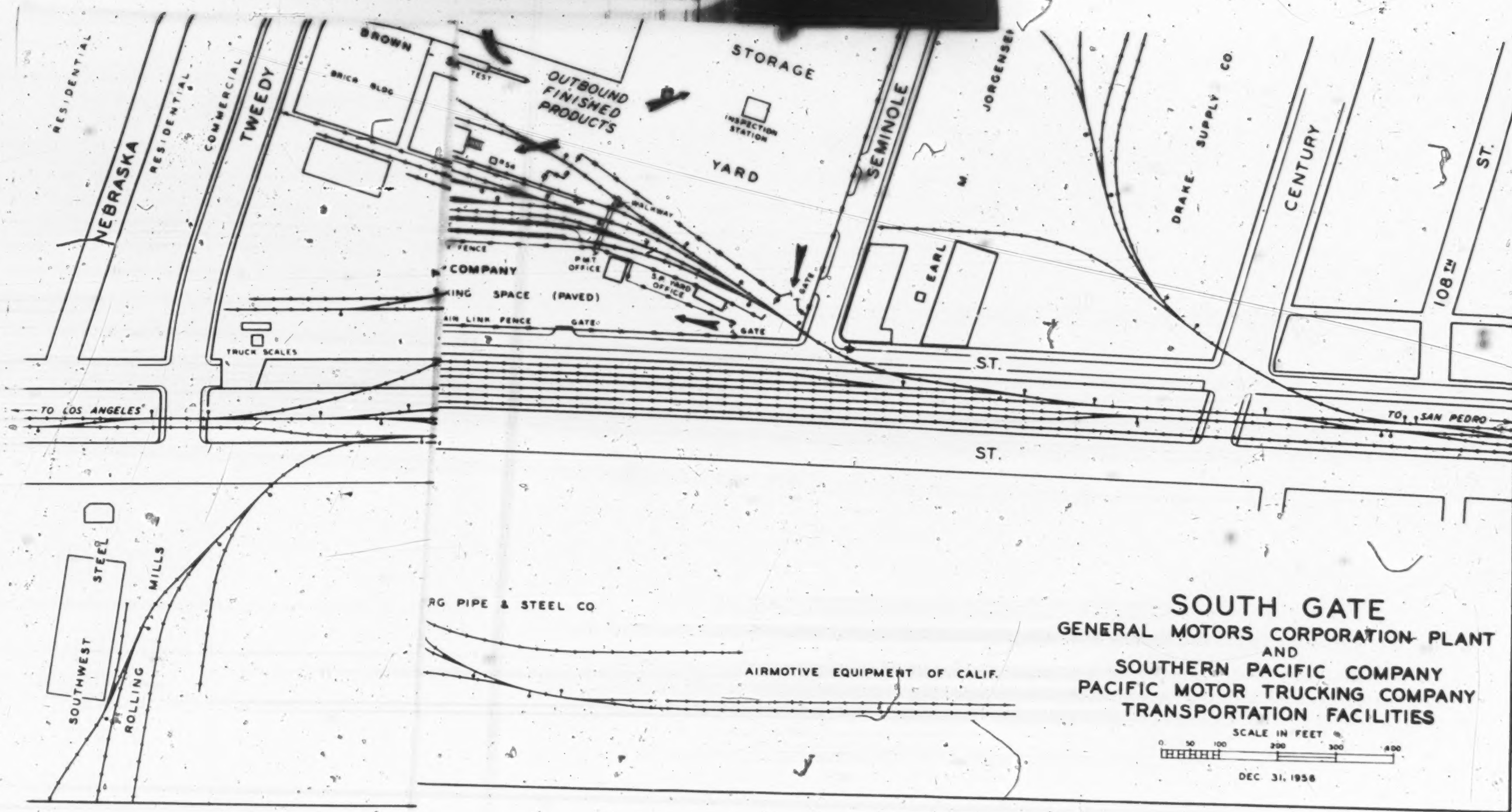
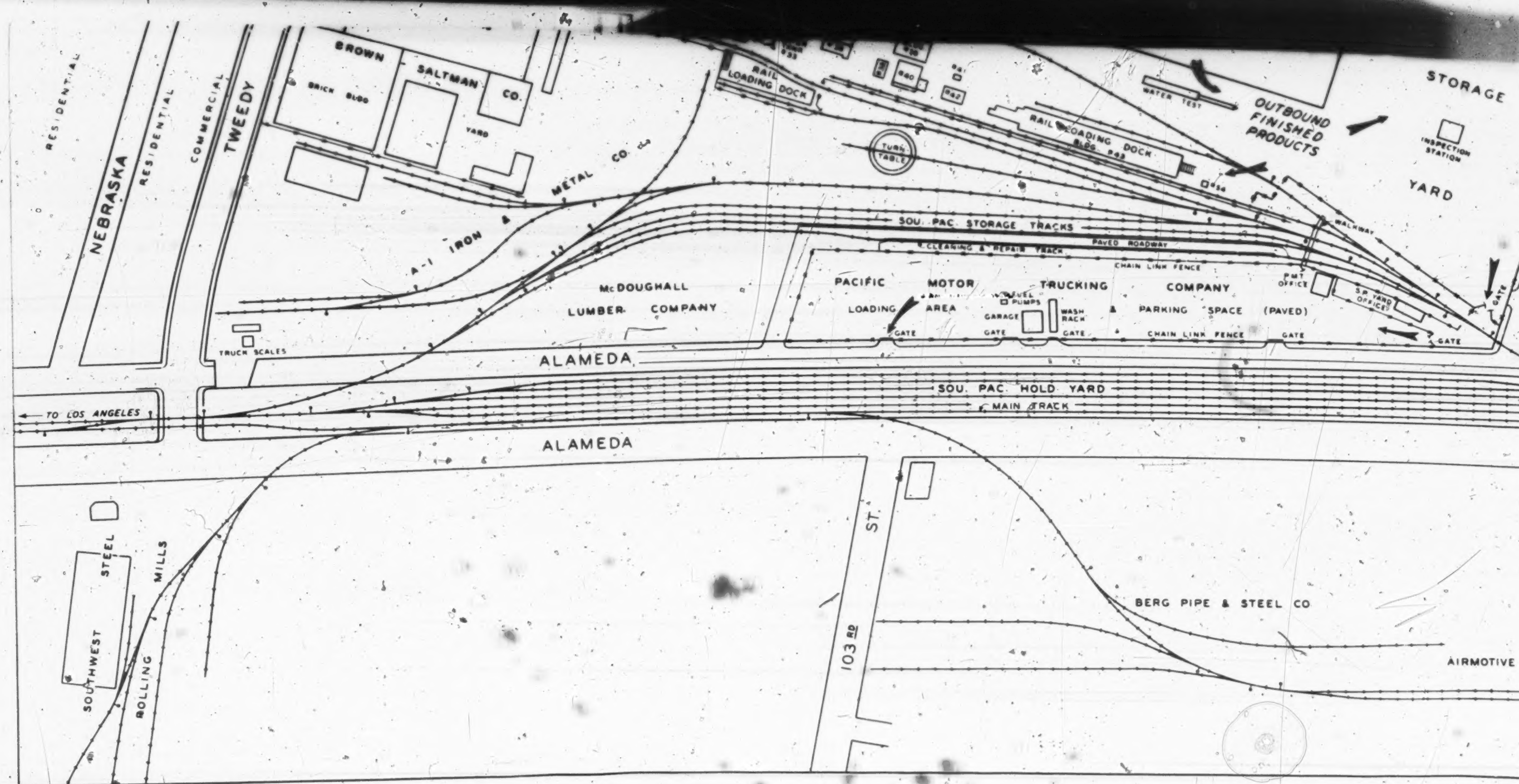













**SOUTH GATE**  
GENERAL MOTORS CORPORATION PLANT  
AND  
SOUTHERN PACIFIC COMPANY  
PACIFIC MOTOR TRUCKING COMPANY  
TRANSPORTATION FACILITIES

SCALE IN FEET  
0 50 100 200 300 400  
DEC 31, 1958



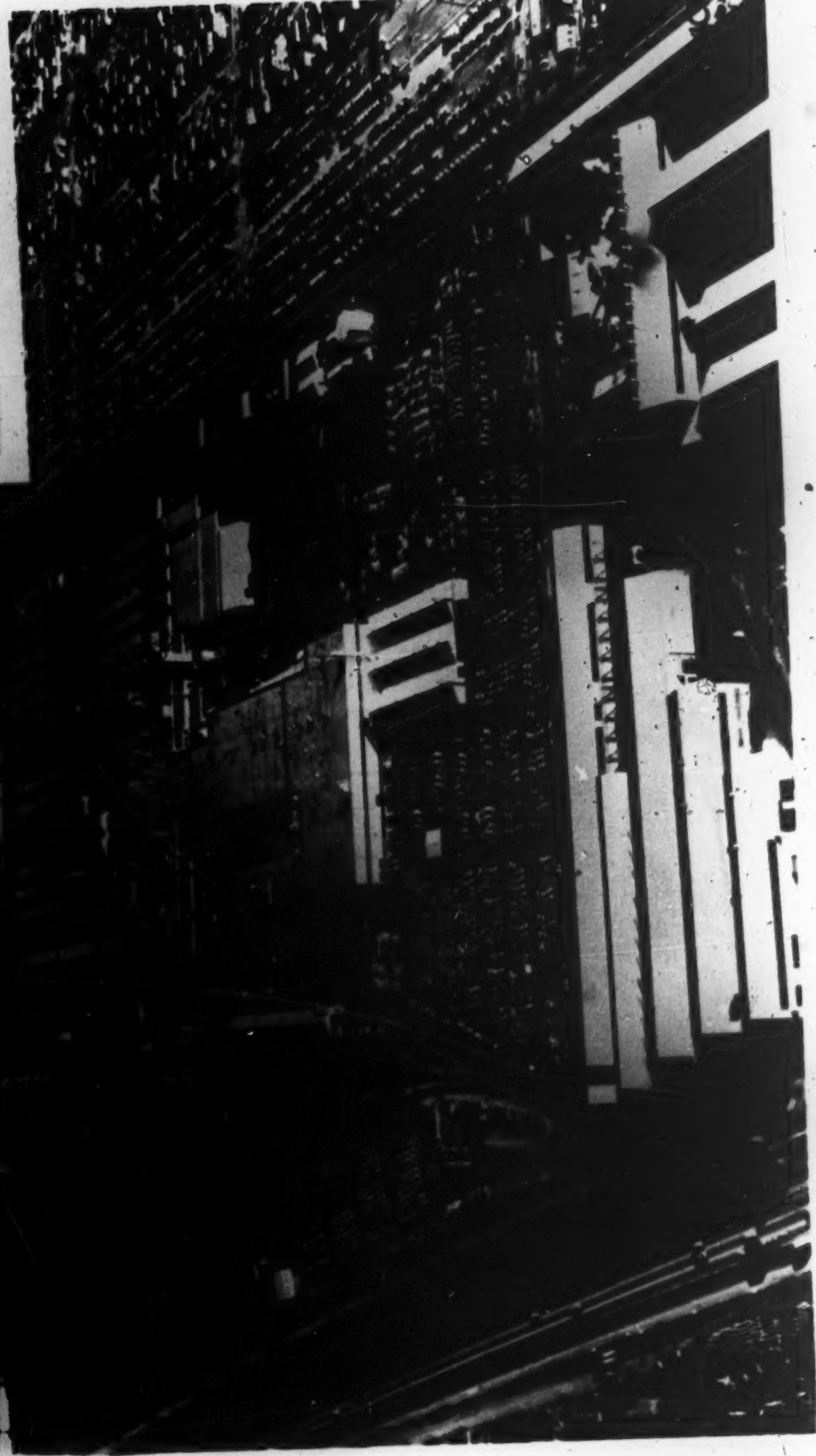
APPLICANT'S EXHIBIT 13

(See Opposite) 

L.C.C. Docket MC-9597. Sub. No. 37

Exhibit No. 13

Witness Booth



[fol. 720]

APPLICANT'S EXHIBIT 14


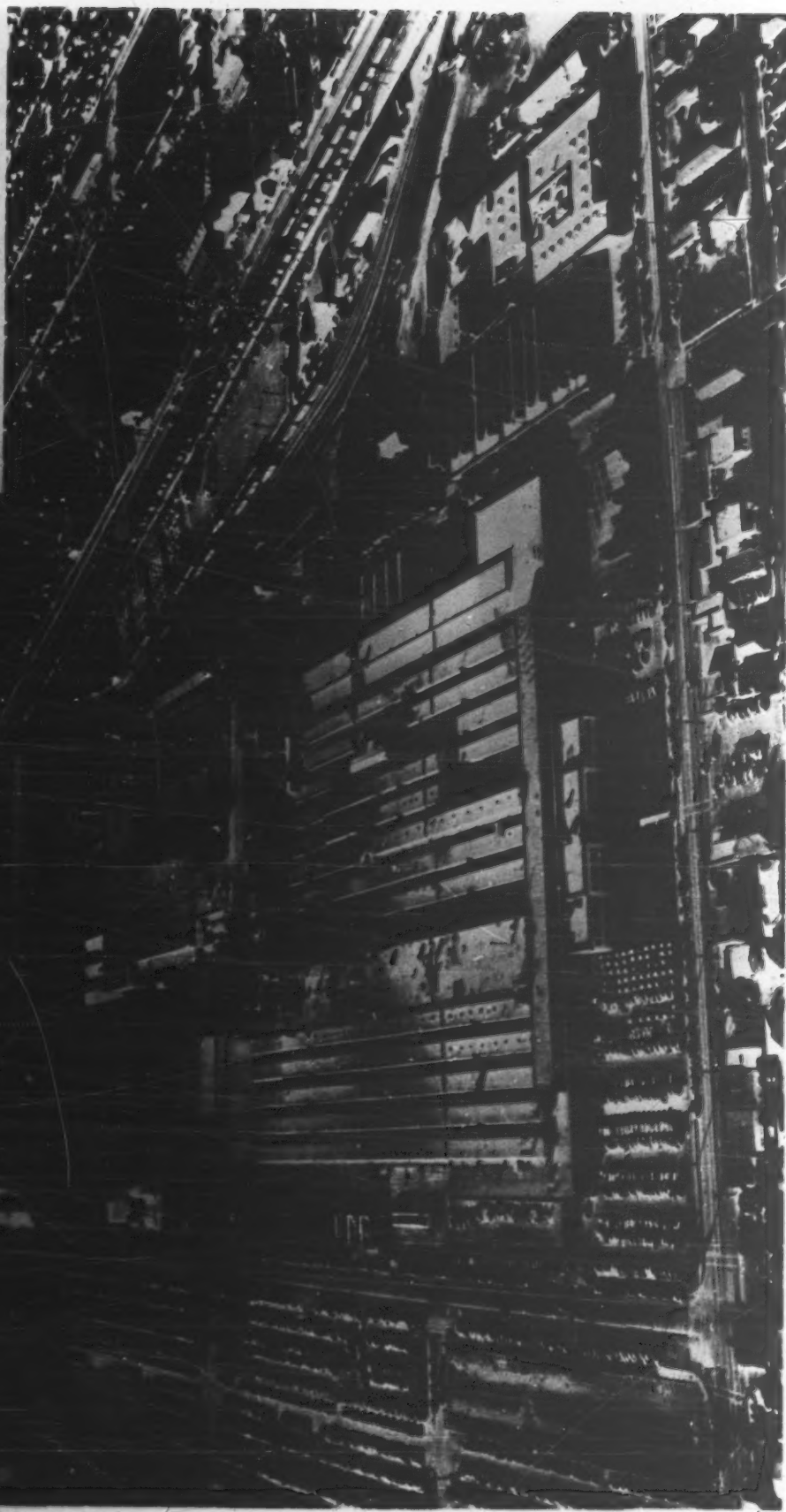
(See Opposite) 



EXHIBIT NO. 14

WITNESS

BOOTH



[fol. 721]

INTERVENOR'S EXHIBIT 18


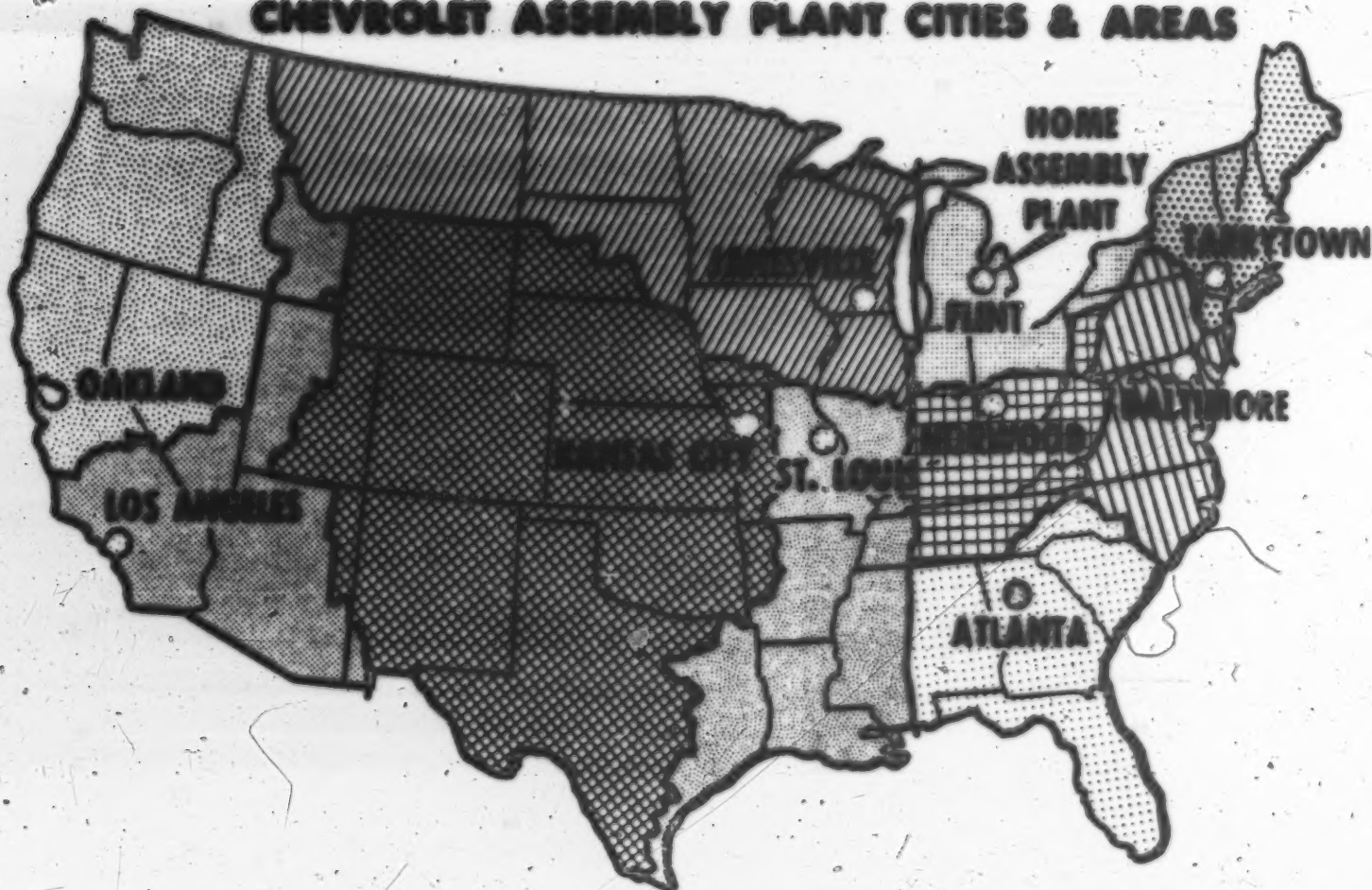
(See Opposite) 

EXHIBIT NO. 18  
WITNESS Lynch  
DOCKET NO. 82-76707 SUB 37

### CHEVROLET ASSEMBLY PLANT CITIES & AREAS



[fol. 722]



502

INTERVENOR'S EXHIBIT 23

(See Opposite)


**BUICK-OLDSMOBILE-PONTIAC Assembly Div. G.M.C.**  
**SHIPPING AREAS**

WITNESS Barrett



[fol. 723]

INTERVENOR'S EXHIBIT 24

(See Opposite) 

[fol. 724]

Sheet 1 of 4 sheets

**DISTRIBUTION OF BUICK, OLDSMOBILE, AND PONTIAC  
VEHICLES FROM SOUTH GATE, CALIFORNIA, TO POINTS  
AND PLACES INVOLVED IN DOCKET NO. MC-78787, SUB 37**

<u>Point</u>	<u>Population</u>	<u>Period</u> <u>Three Months</u> <u>Ended March 31, 1955</u>
--------------	-------------------	---

Ajo, Ariz.	5,817	4
Casa Grande, Ariz.	4,181	29
Clifton, Ariz.	3,466	32
Coolidge, Ariz.	4,306	24
Cottonwood, Ariz.	1,300	66
Douglas, Ariz.	9,442	18
Flagstaff, Ariz.	7,663	24
Glendale, Ariz.	8,179	110
Globe, Ariz.	6,419	5
Holbrook, Ariz.	2,336	23
Kingman, Ariz.	3,966	5
Lowell, Ariz.	950	20
Mesa, Ariz.	16,790	54
Miami, Ariz.	4,329	24
Nogales, Ariz.	6,153	14
Phoenix, Ariz.	139,576	392
Prescott, Ariz.	6,764	18
Safford, Ariz.	4,378	32
Tucson, Ariz.	50,280	139
Wickenburg, Ariz.	1,736	14
Willcox, Ariz.	1,266	5
Williams, Ariz.	2,152	6
Winslow, Ariz.	6,518	9
Yuma, Ariz.	9,145	47
<b>Total</b>		<b>1114</b>

American Falls, Ida.	1,874	1
Blackfoot, Ida.	5,180	12
Boise, Ida.	34,393	34
Bonner's Ferry, Ida.	1,776	9
Buhl, Ida.	2,870	1
Caldwell, Ida.	10,487	17
Coeur d'Alene, Ida.	12,198	13
Emmett, Ida.	3,067	1
Glenn's Ferry, Ida.	1,515	1
Gooding, Ida.	3,099	6
Grangeville, Ida.	2,544	8
Hailey, Ida.	1,464	2
Idaho Falls, Ida.	19,218	14
Jerome, Ida.	452	3
Kellogg-Wardner, Ida.	4,913	8
Lewiston, Ida.	12,985	33
McCall, Ida.	1,173	1
Nackay, Ida.	760	1
Nalad City, Ida.	2,715	2
Montpelier, Ida.	2,682	3
Notow, Ida.	10,593	20
Mountain Home, Ida.	4,102	4
Pampa, Ida.	6,185	3
Payette, Ida.	4,032	3
Pocatello, Ida.	26,131	7
Potlatch, Ida.	600	2
Preston, Ida.	4,045	5
Rexburg, Ida.	4,253	3
Rupert, Ida.	3,098	1
St. Anthony, Ida.	—	1



Salmon, Ida.	2,648	6
Sandpoint, Ida.	4,265	4
Soda Springs, Ida.	1,329	2
Twin Falls, Ida.	17,600	10
Wallace, Ida.	3,140	1
Weiser, Ida.	3,961	4

Total	246
-------	-----

Anaconda, Mont.	11,254	2
Butte, Mont.	33,251	3
Conrad, Mont.	1,865	2
Great Falls, Mont.	39,214	4
Hamilton, Mont.	2,678	2
Helena, Mont.	17,581	8
Kalispell, Mont.	9,737	2
Missoula, Mont.	22,485	11
Polson, Mont.	2,280	1
Shelby, Mont.	3,058	1

Total	36
-------	----

Carson City, Nev.	3,082	12
Ely, Nev.	3,558	1
Fallon, Nev.	2,400	17
Hawthorne, Nev.	1,861	13
Las Vegas, Nev.	44,795	218
Minden, Nev.	240	5
Reno, Nev.	32,497	244
Tonopah, Nev.	1,375	15
Winnemucca, Nev.	2,847	12
Yerington, Nev.	1,157	13

Total	550
-------	-----

Albany, Ore.	10,115	72
Arlington, Ore.	686	2
Ashland, Ore.	7,739	21
Astoria, Ore.	12,331	29
Baker, Ore.	9,471	9
Bend, Ore.	11,409	48
Brookings, Ore.	2,273	8
Burns, Ore.	3,093	11
Clatskanie, Ore.	901	14
Cope Bay, Ore.	6,223	51
Coquille, Ore.	4,616	66
Corvallis, Ore.	16,207	47
Cottage Grove, Ore.	3,536	29
Dallas, Ore.	4,793	23
De Lake, Ore.	644	2
Drain, Ore.	1,150	6
Enterprise, Ore.	1,718	2
Eugene, Ore.	35,879	202
Fossil, Ore.	645	5
Gladstone, Ore.	3,263	68
Gold Beach, Ore.	677	3
Grants Pass, Ore.	8,116	61
Gresham, Ore.	3,049	41
Hoppper, Ore.	1,648	1
Hermiston, Ore.	3,804	12
Hillsboro, Ore.	5,142	117
Hood River, Ore.	3,701	19
Ione, Ore.	262	1
John Day, Ore.	1,597	7
Junction City, Ore.	1,475	18
Klamath Falls, Ore.	15,875	114
LaGrande, Ore.	8,635	2
Lakeview, Ore.	2,831	26
Lebanon, Ore.	5,873	49
Madras, Ore.	1,258	5
McMinnville, Ore.	6,635	48

[fol. 726]

Sheet 3 of 4 sheets

Medford, Ore.	19,050	102
Milton-Freewater, Ore.	3,851	1
Nowburg, Ore.	3,946	31
Nowport, Ore.	3,241	35
Nyssa, Ore.	2,525	3
Ontario, Ore.	4,465	13
Oregon City, Ore.	7,682	91
Pondloton, Ore.	11,774	27
Portland, Ore.	373,628	1179
Prineville, Ore.	3,233	26
Redmond, Ore.	2,956	8
Reedsport, Ore.	3,038	17
Roseburg, Ore.	8,390	100
St. Helens, Ore.	4,711	16
Salem, Ore.	44,947	134
Searside, Ore.	3,886	10
Springfield, Ore.	12,436	30
The Dalles, Ore.	9,864	29
Tillamook, Ore.	3,685	24
Woodburn, Ore.	2,395	3

Total 3118

American Fork, Utah	5,126	2
Bountiful, Utah	6,004	1
Brigham City, Utah	6,790	9
Delta, Utah	1,703	1
Kaysville, Utah	1,898	1
Logan, Utah	16,832	4
Magna, Utah	3,502	9
Morgan, Utah	1,064	1
Nephi, Utah	2,990	2
Ogden, Utah	57,112	24
Payson, Utah	3,998	1
Price, Utah	6,010	8
Provo, Utah	28,937	18
Richfield, Utah	4,212	5
St. George, Utah	4,562	4
Salina, Utah	1,789	4
Salt Lake City, Utah	182,121	108
Spanish Fork, Utah	5,230	1
Tooele, Utah	7,269	10
Tremontone, Utah	1,662	8

Total 221

Aberdeen, Wash.	19,653	57
Anacortes, Wash.	6,919	35
Arlington, Wash.	1,924	8
Auburn, Wash.	6,497	70
Bellevue, Wash.	7,658	59
Bellingham, Wash.	34,112	41
Bromerton, Wash.	27,678	46
Camas, Wash.	4,620	3
Castle Rock, Wash.	1,245	7
Centralia, Wash.	8,657	16
Chocoma, Wash.	5,639	26
Chowoh, Wash.	1,650	4
Clo Elum, Wash.	2,200	2
Colfax, Wash.	3,050	31
Colville, Wash.	3,600	6
Coupeville, Wash.	545	1
Devonport, Wash.	1,450	8
Dayton, Wash.	2,980	4
Ellensburg, Wash.	8,430	9
Enumclaw, Wash.	2,900	17
Ephrata, Wash.	4,589	2
Everett, Wash.	33,722	64
Goldendale, Wash.	2,100	2
Grand Coulee, Wash.	1,381	2

[fol. 727]

Sheet 4 of 4 sheets

Grandview, Wash.	3,200	14
Kolso, Wash.	7,345	4
Kont, Wash.	3,670	29
Kirkland, Wash.	4,713	89
LaGrande, Wash.	--	9
Longview, Wash.	20,339	59
Lynden, Wash.	2,278	22
Montesano, Wash.	2,461	8
Morton, Wash.	1,300	6
Moses Lake, Wash.	6,377	28
Mount Vernon, Wash.	5,230	36
Newport, Wash.	1,424	6
North Bend, Wash.	800	29
Odessa, Wash.	1,236	1
Okanogan, Wash.	2,082	2
Olympia, Wash.	15,819	41
Omak, Wash.	4,100	16
Oroville, Wash.	1,578	2
Pasco, Wash.	10,228	38
Pomeroy, Wash.	1,775	3
Port Angeles, Wash.	11,233	24
Port Townsend, Wash.	6,888	7
Prosser, Wash.	3,125	22
Pullman, Wash.	12,022	8
Puyallup, Wash.	10,010	34
Raymond, Wash.	4,115	32
Redmond, Wash.	--	1
Renton, Wash.	16,039	29
Ritzville, Wash.	2,145	9
Satsop, Wash.	125	7
Seattle, Wash.	516,200	1130
Sedro Woolley, Wash.	3,390	11
Shelton, Wash.	5,045	12
Snohomish, Wash.	3,430	11
Spokane, Wash.	161,721	246
Sunnyside, Wash.	5,084	18
Tacoma, Wash.	143,673	143
Tukoa, Wash.	1,157	2
Topponish, Wash.	5,684	3
Vancouver, Wash.	41,664	115
Walla Walla, Wash.	24,102	8
Waterville, Wash.	1,010	2
Wenatchee, Wash.	13,072	10
Winslow, Wash.	697	2
Yakima, Wash.	38,486	10
Total		2858

GRAND TOTAL

8143 177

## INTERVENOR'S EXHIBIT 26

Sheet 1 of 3 sheets

[fol. 728]

DISTRIBUTION OF CHEVROLET VEHICLES FROM  
OAKLAND, CALIFORNIA, TO POINTS AND PLACES  
INVOLVED IN DOCKET NO. MC-78787, SUB 37

Point	Population	Period	
		Year 1955	Six Months Ended June 30, 1956
Boise, Ida.	34,393	1248	522
Bonner's Ferry, Ida.	1,776	121	62
Buhl, Ida.	2,870	125	57
Caldwell, Ida.	10,487	332	140
Coeur d'Alene, Ida.	12,198	183	108
Craigmont, Ida.	594	49	17
Donnelly, Ida.	150	103	49
Emmett, Ida.	3,067	78	37
Glenn's Ferry, Ida.	1,515	37	18
Gooding, Ida.	3,099	198	93
Grangeville, Ida.	2,544	116	57
Hailey, Ida.	1,464	86	43
Jerome, Ida.	452	144	67
Kellogg-Wardner, Ida.	4,913	138	82
Lewiston, Ida.	12,985	542	271
Moscow, Ida.	10,593	196	141
Mountain Home, Ida.	4,102	131	84
Nampa, Ida.	6,185	179	87
Orofino, Ida.	2,708	135	54
Parma, Ida.	1,369	10	10
Payette, Ida.	4,032	127	57
Potlatch, Ida.	600	29	20
Priest River, Ida.	1,592	66	26
St. Maries, Ida.	2,220	109	90
Sandpoint, Ida.	4,265	126	68
Shoshone, Ida.	1,420	62	37
Twin Falls, Ida.	17,600	334	132
Wallace, Ida.	3,440	132	39
Weiser, Ida.	3,961	156	90
		<u>5292</u>	<u>2558</u>
Ely, Nev.	3,558	122	42
Arlington, Ore.	686	73	38
Astoria, Ore.	12,331	229	113
Baker, Ore.	9,471	196	93
Bend, Ore.	11,409	170	108
Burns, Ore.	3,093	100	69
Clatskanie, Ore.	901	137	53
Condon, Ore.	918	80	37
De Lake, Ore.	644	92	31
Enterprise, Ore.	1,718	38	59
Estacada, Ore.	950	103	40
Florence, Ore.	1,026	114	74
Fossil, Ore.	645	27	16
Gold Beach, Ore.	677	103	35
Gresham, Ore.	3,049	370	188
Happner, Ore.	1,648	114	61
Hermiston, Ore.	3,804	130	71
Hood River, Ore.	3,701	178	123
John Day, Ore.	1,597	205	91
La Grande, Ore.	8,635	214	106
Madras, Ore.	1,258	150	75
Milton-Freewater, Ore.	3,851	225	95

[fol. 729]

Sheet 2 of 3 sheets

Newport, Ore.	3,241	121	38
Nyssa, Ore.	2,525	114	44
Ontario, Ore.	4,465	114	50
Paisley, Ore.	214	34	10
Pendleton, Ore.	11,774	116	110
Pilot Rock, Ore.	847	60	23
Prineville, Ore.	3,233	165	72
Rainier, Ore.	1,285	104	34
Redmond, Ore.	2,956	112	54
St. Helens, Ore.	4,711	224	96
St. Paul, Ore.	226	52	21
Sandy, Ore.	1,003	127	54
Seio, Ore.	448	73	73
Seaside, Ore.	3,886	43	31
Stayton, Ore.	1,507	201	107
Sweet Home, Ore.	3,603	119	61
The Dalles, Ore.	9,864	409	145
Union, Ore.	1,307	46	23
Vale, Ore.	1,518	63	24
Vernonia, Ore.	1,521	56	20
		<u>5401</u>	<u>2666</u>

Wendover, Utah	776	41	12
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Aberdeen, Wash.	19,653	272	139
Almira, Wash.	408	36	16
Anacortes, Wash.	6,919	117	45
Arlington, Wash.	1,924	97	57
Auburn, Wash.	6,497	607	383
Bear Park, Wash.	--	65	24
Bellevue, Wash.	7,658	197	183
Bellingham, Wash.	34,112	339	171
Bothell, Wash.	1,100	89	258
Bremerton, Wash.	27,678	578	192
Brewster, Wash.	1,204	137	48
Camas, Wash.	4,620	111	68
Cashmere, Wash.	1,772	56	32
Castle Rock, Wash.	1,245	178	87
Centralia, Wash.	8,657	159	90
Chohalis, Wash.	5,639	152	72
Cholan, Wash.	2,100	41	16
Cheney, Wash.	2,800	234	100
Chewelah, Wash.	1,650	36	15
Cle Elum, Wash.	2,200	70	35
Colfax, Wash.	3,050	217	107
Colville, Wash.	3,600	78	44
Coulee City, Wash.	718	54	15
Coupeville, Wash.	545	58	28
Davenport, Wash.	1,450	60	31
Dayton, Wash.	2,980	32	8
Deer Park, Wash.	1,220	65	65
Dishman, Wash.	2,500	497	435
East Stanwood, Wash.	387	126	57
Eatonville, Wash.	950	130	88
Edmond, Wash.	2,829	282	154
Ellensburg, Wash.	8,430	109	72
Elmer, Wash.	1,682	73	34
Enumclaw, Wash.	2,900	158	86
Ephrata, Wash.	4,589	160	65
Everett, Wash.	33,722	330	174
Ferndale, Wash.	1,083	115	43
Friday Harbor, Wash.	751	26	7
Gig Harbor, Wash.	860	72	42
Goldendale, Wash.	2,100	42	23
Grand Coulee, Wash.	1,381	54	26
Grandview, Wash.	3,200	60	36
Issaquah, Wash.	1,040	181	93

779



[fol. 730]

Sheet 3 of 3 sheets

Kelso, Wash.	7,345	101	54
Kent, Wash.	3,670	227	115
Kirkland, Wash.	4,713	249	108
Leavenworth, Wash.	1,525	44	18
Lind, Wash.	830	47	20
Longview, Wash.	20,339	286	134
Lynden, Wash.	2,278	92	24
Marysville, Wash.	2,457	202	89
Meteline Falls, Wash.	548	24	7
Monroe, Wash.	1,708	92	43
Montesano, Wash.	2,461	198	104
Morton, Wash.	1,300	34	27
Moses Lake, Wash.	6,377	172	98
Mount Vernon, Wash.	5,230	265	103
Naches, Wash.	580	106	104
Newport, Wash.	1,424	49	25
North Bend, Wash.	800	77	93
Oak Harbor, Wash.	2,053	79	28
Odessa, Wash.	1,236	92	16
Okanogan, Wash.	2,082	54	27
Olympia, Wash.	15,819	276	136
Omak, Wash.	4,100	49	27
Palouse, Wash.	995	25	22
Pasco, Wash.	10,228	640	173
Pomeroy, Wash.	1,775	49	14
Port Angeles, Wash.	11,233	171	80
Port Orchard, Wash.	2,800	131	44
Poulsbo, Wash.	1,396	66	25
Port Townsend, Wash.	6,888	66	17
Prosser, Wash.	3,125	76	26
Pullman, Wash.	12,022	112	60
Puyallup, Wash.	10,010	107	50
Quincy, Wash.	1,777	59	16
Raymond, Wash.	4,115	139	89
Renton, Wash.	16,039	449	228
Republic, Wash.	1,018	23	25
Ritzville, Wash.	2,045	48	16
Rockford, Wash.	360	23	15
Rosalia, Wash.	680	59	34
Seattle, Wash.	516,200	6362	2775
Sedro Woolley, Wash.	3,390	211	73
Shelton, Wash.	5,045	195	107
Snohomish, Wash.	3,430	167	120
Spokane, Wash.	161,721	1832	860
Sprague, Wash.	593	13	6
Stevenson, Wash.	728	55	30
Sumner, Wash.	2,840	140	70
Sunnyside, Wash.	5,084	170	70
Tacoma, Wash.	143,673	1575	737
Tekoa, Wash.	1,157	42	30
Tonasket, Wash.	980	48	12
Toppenish, Wash.	5,684	139	49
Twisp, Wash.	675	24	14
Vancouver, Wash.	41,664	587	418
Walla Walla, Wash.	24,102	242	155
Wapato, Wash.	3,800	47	16
Washburn, Wash.	360	41	8
Waterville, Wash.	1,010	25	22
Wenatchee, Wash.	13,072	257	104
White Salmon, Wash.	1,433	113	73
Winlock, Wash.	992	92	43
Winslow, Wash.	697	32	17
Woodland, Wash.	1,300	134	52
Yakima, Wash.	38,486	654	301
		24805	12268
GRAND TOTALS		35,661	17,538 730

## INTERVENOR'S EXHIBIT 28

[fol. 731]

*by rail*

Sheet 1 of 5

DISTRIBUTION OF CHEVROLET VEHICLES FROM  
RAYMER, CALIFORNIA, TO POINTS AND PLACES  
INVOLVED IN DOCKET NO. MC-78787, SUB 37

<u>Point</u>	<u>Population</u>	<u>Year</u> <u>1955</u>	<u>Period</u> Six Months Ended
			<u>June 30, 1956</u>
Ajo, Ariz.	5,817	57	37
Cottonwood, Ariz.	1,300	334	127
Flagstaff, Ariz.	7,663	280	76
Glendale, Ariz.	8,179	532	211
Holbrook, Ariz.	2,336	191	64
Kingman, Ariz.	3,966	63	24
Parker, Ariz.	1,201	83	62
Prescott, Ariz.	6,764	191	65
St. Johns, Ariz.	1,469	75	42
Seligman, Ariz.	764	129	70
Springerville, Ariz.	689	100	50
Superior, Ariz.	4,200	104	47
Wickenburg, Ariz.	1,736	225	123
Williams, Ariz.	2,152	40	19
Winslow, Ariz.	6,518	49	17
	Total	2,453	1,034
American Falls, Idaho	1,874	93	33
Arco, Idaho	961	66	24
Ashton, Idaho	1,256	56	21
Blackfoot, Idaho	5,180	155	75
Boise, Idaho	34,393	13	72
Burley, Idaho	5,924	142	60
Caldwell, Idaho	10,487	5	4
Coeur d'Alene, Idaho	12,198	5	0
Driggs, Idaho	941	51	17
Dubois, Idaho	430	40	19
Emmett, Idaho	3,067	2	-
Grace, Idaho	761	66	20
Idaho Falls, Idaho	19,218	600	211
Jerome, Idaho	452	4	-
Kellogg-Wardner, Idaho	4,913	1	-
Lewiston, Idaho	12,985	13	28
MacKay, Idaho	760	67	26
Malad City, Idaho	2,715	74	27
Moscow, Idaho	10,593	11	-
Mountain Home, Idaho	4,102	-	8
Nampa, Idaho	6,185	2	4
Payette, Idaho	4,032	1	-
Pocatello, Idaho	26,131	223	162
Potlatch, Idaho	600	1	-
Preston, Idaho	4,045	151	85
Priest River, Idaho	1,592	1	-
Rexburg, Idaho	4,253	131	58
Rigby, Idaho	1,826	71	21
Rupert, Idaho	3,098	127	69
St. Anthony, Idaho	2,695	87	35
St. Maries, Idaho	2,220	4	-
Salmon, Idaho	2,648	71	45
Sandpoint, Idaho	4,265	2	-
Soda Springs, Idaho	1,329	107	54
Twin Falls, Idaho	17,600	4	-
Wallace, Idaho	3,140	5	-
Weiser, Idaho	3,961	-	4
	Total	2,452	1,182

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[fol. 732]

Sheet 2 of 5

Carson City, Nev.	3,082	2	-
Elko, Nev.	5,393	4	-
Fallon, Nev.	2,400	5	-
Hawthorne, Nev.	1,861	8	4
Las Vegas, Nev.	44,795	729	348
Lovelock, Nev.	1,604	5	-
Minna, Nev.	300	-	4
Minden, Nev.	240	1	1
Pioche, Nev.	1,392	68	-
Reno, Nev.	32,497	52	39
Wabuska, Nev.	60	4	-
Winnamucca, Nev.	2,847	3	-
Yerington, Nev.	1,157	1	-
Total		885	398
Lordsburg, N. Mex.	3,525	165	63
Albany, Ore.	10,115	6	8
Ashland, Ore.	7,739	2	8
Astoria, Ore.	12,331	3	-
Baker, Ore.	9,471	1	-
Beaverton, Ore.	3,213	11	12
Bend, Ore.	11,409	3	-
Burns, Ore.	3,093	3	-
Canby, Ore.	1,671	1	-
Chiloquin, Ore.	668	1	-
Clatskanie, Ore.	901	3	-
Coos Bay, Ore.	6,223	12	4
Coquille, Ore.	4,616	4	12
Corvallis, Ore.	16,207	4	4
Cottage Grove, Ore.	3,536	3	4
Dallas, Ore.	4,793	5	8
DeLake, Ore.	644	2	-
Eugene, Ore.	35,879	11	44
Elr, Ore.	None Shown	-	8
Forest Grove, Ore.	4,343	1	-
Gold Beach, Ore.	677	1	-
Grants Pass, Ore.	8,116	9	4
Grass Valley, Ore.	195	4	-
Gresham, Ore.	3,049	6	5
Harrisburg, Ore.	862	1	-
Heppner, Ore.	1,648	1	-
Hillsboro, Ore.	5,142	3	8
Hood River, Ore.	3,701	3	8
Independence, Ore.	1,987	1	-
John Day, Ore.	1,597	3	4
Junction City, Ore.	1,475	5	4
Klamath Falls, Ore.	15,875	7	8
La Grande, Ore.	8,635	-	12
Lebanon, Ore.	5,873	2	-
Madras, Ore.	1,258	-	4
McMinnville, Ore.	6,635	2	4
Medford, Ore.	19,050	8	24
Milton-Freewater, Ore.	3,851	4	8
Myrtle Creek, Ore.	1,781	1	-
Newburg, Ore.	3,946	1	4
Nyssa, Ore.	2,525	1	-
Oakridge, Ore.	1,562	2	4
Ontario, Ore.	4,465	2	8
Oregon City, Ore.	7,682	12	28
Oswego, Ore.	3,316	15	16
Paisley, Ore.	214	1	-
Pendleton, Ore.	11,774	1	16
Pilot Rock, Ore.	847	4	-

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Sheet 3 of 5

Portland, Ore.	373,628	67	471
Prineville, Ore.	3,233	4	-
Roseburg, Ore.	8,390	5	-
St. Helens, Ore.	4,711	7	20
Salem, Ore.	44,947	11	52
Scio, Ore.	448	2	-
Seneca, Ore.	275	2	-
Silverton, Ore.	3,146	1	-
Springfield, Ore.	12,436	2	-
Stayton, Ore.	1,507	6	20
Sutherlin, Ore.	2,230	1	-
The Dalles, Ore.	9,864	3	8
Tillamook, Ore.	3,685	3	-
Tigard, Ore.	1,000	1	4
Turner, Ore.	610	3	-
Vale, Ore.	1,518	1	-
Woodburn, Ore.	2,395	2	-
Total		297	856

American Fork, Utah	5,126	129	59
Beaver, Utah	1,685	25	11
Bountiful, Utah	6,004	466	201
Brigham City, Utah	6,790	118	69
Cedar City, Utah	6,106	276	152
Coalville, Utah	850	61	28
Delta, Utah	1,703	78	43
Fillmore, Utah	1,890	51	42
Heber, Utah	2,936	88	29
Hurricane, Utah	1,271	24	11
Layton, Utah	3,456	144	66
Logan, Utah	16,832	78	81
Magna, Utah	3,502	162	151
Morgan, Utah	1,064	68	47
Nephi, Utah	2,990	81	31
Ogden, Utah	57,112	423	250
Park City, Utah	2,254	23	8
Provo, Utah	28,937	409	163
Riverton, Utah	1,666	-	116
St. George, Utah	4,562	27	24
Salt Lake City, Utah	182,121	2,840	1,511
Spanish Fork, Utah	5,230	303	174
Tooele, Utah	7,269	109	50
Tremonton, Utah	1,662	130	61
Total		6,113	3,378

Aberdeen, Wash.	19,653	8	4
Almira, Wash.	406	1	-
Anacortes, Wash.	6,919	5	-
Arlington, Wash.	1,924	1	-
Auburn, Wash.	6,497	9	4
Bellevue, Wash.	7,658	2	-
Bellingham, Wash.	34,112	14	8
Bothell, Wash.	1,100	9	-
Bremerton, Wash.	27,678	7	-
Brewster, Wash.	1,204	6	-
Camas, Wash.	4,620	1	-
Cashmere, Wash.	1,772	1	4
Castle Rock, Wash.	1,245	1	4
Centralia, Wash.	8,657	2	0
Chehalis, Wash.	5,639	1	6
Chelan, Wash.	2,100	1	-
Cheney, Wash.	2,800	2	-
Chewelah, Wash.	1,650	1	-
Cle Elum, Wash.	2,200	1	4

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Sheet 4 of 5

Colfax, Wash.	3,050	4	-
Colville, Wash.	3,600	1	-
Coulee City, Wash.	718	2	-
Coupeville, Wash.	545	1	-
Davenport, Wash.	1,450	1	-
Deer Park, Wash.	1,220	1	-
Dishman, Wash.	2,500	1	-
Eatonville, Wash.	950	7	24
Edmonds, Wash.	2,829	3	-
Ellensburg, Wash.	8,430	2	-
Elma, Wash.	1,682	1	-
Enumclaw, Wash.	2,900	4	-
Ephrata, Wash.	4,589	3	-
Everett, Wash.	33,722	8	8
Ferndale, Wash.	1,083	3	-
Friday Harbor, Wash.	751	1	-
Grandview, Wash.	3,200	5	4
Kelso, Wash.	7,345	1	-
Kent, Wash.	3,670	1	-
Kirkland, Wash.	4,713	5	-
Leavenworth, Wash.	1,525	1	-
Longview, Wash.	20,339	5	4
Lynden, Wash.	2,278	1	-
Monroe, Wash.	1,708	1	-
Montesano, Wash.	2,461	2	-
Moses Lake, Wash.	6,377	3	8
Mount Vernon, Wash.	5,230	1	12
Naches, Wash.	580	1	-
North Bend, Wash.	800	6	-
Oak Harbor, Wash.	2,053	1	-
Odessa, Wash.	1,236	1	-
Okanogan, Wash.	2,082	1	-
Olympia, Wash.	15,819	7	4
Palouse, Wash.	995	1	-
Pasco, Wash.	10,228	8	-
Port Angeles, Wash.	11,233	1	-
Port Orchard, Wash.	2,800	1	-
Poulsbo, Wash.	1,396	1	-
Port Townsend, Wash.	6,888	1	-
Prosser, Wash.	3,125	1	-
Pullman, Wash.	12,022	1	-
Puyallup, Wash.	10,010	1	-
Quincy, Wash.	1,777	2	-
Raymond, Wash.	4,115	3	-
Renton, Wash.	16,039	12	4
Ritzville, Wash.	2,145	2	-
Rockford, Wash.	360	1	-
Rosalia, Wash.	680	1	-
Seattle, Wash.	516,200	123	240
Sedro Woolley, Wash.	3,390	4	-
Shelton, Wash.	5,045	1	4
Shohamish, Wash.	3,430	2	-
Spokane, Wash.	161,721	39	76
Sumner, Wash.	2,840	1	-
Sunnyside, Wash.	5,084	3	4
Tacoma, Wash.	143,673	39	52
Tekoa, Wash.	1,157	1	-
Tenasket, Wash.	980	1	-
Topenish, Wash.	5,684	6	-
Vancouver, Wash.	41,664	22	32
Walla Walla, Wash.	24,102	6	16
Wapato, Wash.	3,800	1	4
Waterville, Wash.	1,010	5	-
Wenatchee, Wash.	13,072	2	4

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Sheet 5 of 5 (Final)

White Salmon, Wash.  
Winlock, Wash.  
Woodland, Wash.  
Yakima, Wash.

1,433  
992  
1,300  
38,486

Total

2  
1  
1  
5  
473

4  
2  
-  
16  
356

GRAND TOTAL 12,838

7,465

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SOUTHERN PACIFIC COMPANY

STATEMENT SHOWING TRANSIT TIME ON SHIPMENTS OF MOTOR VEHICLES TRANSPORTED  
BY RAIL FROM SOUTH GATE, <sup>1</sup>DAYTON, AND ~~CHANDLER~~, CALIFORNIA DURING THE PERIOD

JANUARY 14 TO 25, 1937, INCLUSIVE, ALSO SHOWS IS THE TRANSIT

TIME BETWEEN THE SAME POINTS BY PACIFIC MOTOR TRUCKING COMPANY,

AS SET FORTH ON EXHIBIT NO. \_\_\_\_\_

Car Number (a)	Date of Shipment (b)	Destination (c)	Agent (d)	Arrival Destination (e)	Delivery Destination (f)	Mail Transit Time (g)	Freighting Transit Time (h)
1. SP 192237	1-14-57	Eugene, Oregon	SP *	1-17-57	1-17-57	3	
2. SP 683391	1-14-57	Eugene, Oregon	SP *	1-17-57	1-18-57	4	2
3. SP 65946	1-14-57	Medford, Oregon	SP *	1-18-57	1-18-57	4	
4. SP 190031	1-14-57	LaBonne, Oregon	SP *	1-18-57	1-18-57	4	2
5. SP 193922	1-14-57	Portland, Oregon	SP *	1-18-57	1-18-57	4	2
6. SP 683272	1-14-57	Hillsboro, Oregon	SP *	1-18-57	1-18-57	4	2
7. SP 65963	1-14-57	Portland, Oregon	SP *	1-19-57	1-19-57	3	3
8. SP 680031	1-14-57	Salem, Oregon	SP *	1-18-57	1-18-57	4	2
9. SP 190478	1-14-57	Mesa, Arizona	SP *	1-18-57	1-18-57	4	2
10. SP 680744	1-14-57	Tucson, Arizona	SP *	1-17-57	1-17-57	3	1
				1-17-57	1-19-57	3	1
11. SP 65596	1-15-57	Tuma, Arizona	SP *	1-16-57	1-17-57	2	1
12. SP 683367	1-15-57	Mesa, Arizona	SP *	1-18-57	1-18-57	3	1
13. SP 65568	1-15-57	Tucson, Arizona	SP *	1-18-57	1-18-57	3	1
14. SP 65823	1-15-57	Medford, Oregon	SP *	1-19-57	1-19-57	4	2
15. SP 65679	1-15-57	Portland, Oregon	SP *	1-18-57	1-20-57	5	2
16. SP 683369	1-15-57	Eugene, Oregon	SP *	1-18-57	1-19-57	4	2
17. SP 190498	1-15-57	Portland, Oregon	SP *	1-18-57	1-19-57	4	2
18. SP 681824	1-15-57	Salem, Oregon	SP *	1-18-57	1-21-57	6	3
19. SP 683121	1-15-57	Salem, Oregon	SP *	1-18-57	1-19-57	4	2
				1-18-57	1-19-57	4	2
20. SP 680425	1-16-57	Tuma, Arizona	SP *	1-17-57	1-18-57	2	1
21. SP 681432	1-16-57	Phoenix, Arizona	SP *	1-18-57	1-18-57	2	1
22. SP 65981	1-16-57	Safford, Arizona	SP *	1-20-57	1-21-57	3	1
23. SP 65903	1-16-57	Phoenix, Arizona	SP *	1-19-57	1-19-57	3	1
24. SP 682005	1-16-57	Portland, Oregon	SP *	1-19-57	1-21-57	5	3
25. SP 65848	1-16-57	Portland, Oregon	SP *	1-19-57	1-21-57	3	3
26. SP 681448	1-16-57	Portland, Oregon	SP *	1-19-57	1-21-57	3	3
				1-19-57	1-21-57	3	3
27. SP 681995	1-17-57	Phoenix, Arizona	SP *	1-20-57	1-20-57	3	1
28. SP 193918	1-17-57	Tucson, Arizona	SP *	1-19-57	1-20-57	3	1
29. SP 680137	1-17-57	Eugene, Oregon	SP *	1-21-57	1-21-57	4	2
30. SP 193725	1-17-57	Portland, Oregon	SP *	1-21-57	1-22-57	5	3
31. SP 65573	1-17-57	Albany, Oregon	SP *	1-22-57	1-23-57	6	3
32. SP 683051	1-17-57	Albany, Oregon	SP *	1-21-57	1-22-57	5	2
33. SP 683211	1-17-57	Eugene, Oregon	SP *	1-21-57	1-21-57	4	2
				1-21-57	1-21-57	4	2
34. SP 190067	1-18-57	Mesa, Arizona	SP *	1-20-57	1-20-57	2	1
35. SP 190290	1-18-57	Tucson, Arizona	SP *	1-20-57	1-20-57	2	1
36. SP 682988	1-18-57	Coolidge, Arizona	SP *	1-21-57	1-21-57	3	1
37. SP 680167	1-18-57	Portland, Oregon	SP *	1-22-57	1-23-57	5	3
38. SP 681260	1-18-57	Portland, Oregon	SP *	1-22-57	1-23-57	5	3
39. SP 680635	1-18-57	Eugene, Oregon	SP *	1-21-57	1-22-57	4	2
40. SP 190395	1-18-57	Klamath Falls, Oregon	SP *	1-21-57	1-22-57	4	2
41. SP 192125	1-18-57	Reedsport, Oregon	SP *	1-23-57	1-23-57	5	3
42. SP 190050	1-18-57	Portland, Oregon	SP *	1-22-57	1-23-57	5	3
43. SP 683288	1-18-57	Leakview, Oregon	SP *	1-22-57	1-23-57	4	2
44. SP 190127	1-18-57	Portland, Oregon	SP *	1-22-57	1-23-57	5	3
45. SP 681965	1-18-57	Hillsboro, Oregon	SP *	1-26-57	1-26-57	8	3
				1-26-57	1-26-57	8	3
46. SP 64419	1-19-57	Tuma, Arizona	SP *	1-22-57	1-23-57	4	1
47. SP 69828	1-19-57	Tucson, Arizona	SP *	1-21-57	1-21-57	2	1
48. SP 683157	1-19-57	Reno, Nevada	SP *	1-22-57	1-22-57	3	1
49. SP 193695	1-19-57	Portland, Oregon	SP *	1-22-57	1-23-57	4	3
50. SP 69535	1-19-57	Salem, Oregon	SP *	1-22-57	1-23-57	4	3
51. SP 682281	1-19-57	Hillsboro, Oregon	SP *	1-23-57	1-23-57	4	3
52. SP 681400	1-19-57	Eugene, Oregon	SP *	1-22-57	1-22-57	3	2
53. SP 190186	1-19-57	Portland, Oregon	SP *	1-22-57	1-23-57	4	3
54. SP 65388	1-19-57	Eugene, Oregon	SP *	1-23-57	1-26-57	7	2

\*Southern Pacific Company

San Number (a)	Date of Shipment (b)	Destination (c)	Route (d)	Arrival Washington (e)	Delivery Washington (f)	Rail Transit Time (g)	Treasury Transit Time (h)
1. SP 64146	1-19-57	Eugene, Oregon	SP	1-23-57	1-23-57	4	2
2. SP 190027	1-21-57	Phoenix, Arizona	SP	1-24-57	1-24-57	3	1
3. SP 65857	1-21-57	Phoenix, Arizona	SP	1-23-57	1-23-57	4	1
4. SP 65628	1-21-57	Phoenix, Arizona	SP	1-23-57	1-23-57	4	1
5. SP 682020	1-21-57	Douglas, Arizona	SP	1-23-57	1-23-57	4	1
6. SP 192213	1-21-57	Reno, Nevada	SP	1-24-57	1-24-57	3	2
7. SP 190309	1-21-57	Eugene, Oregon	SP	1-23-57	1-23-57	3	1
8. SP 190138	1-21-57	Eugene, Oregon	SP	1-23-57	1-23-57	5	2
9. SP 681170	1-21-57	Portland, Oregon	SP	1-24-57	1-24-57	4	2
10. SP 680906	1-21-57	Portland, Oregon	SP	1-23-57	1-23-57	7	3
11. SP 683301	1-21-57	Salem, Oregon	SP	1-23-57	1-23-57	4	2
12. SP 65807	1-22-57	Reno, Nevada	SP	1-26-57	1-26-57	5	2
13. SP 190271	1-22-57	Phoenix, Arizona	SP	1-25-57	1-25-57	3	1
14. SP 683599	1-22-57	Mesa, Arizona	SP	1-24-57	1-24-57	2	1
15. SP 683564	1-22-57	Portland, Oregon	SP	1-24-57	1-24-57	2	1
16. SP 683467	1-22-57	Eugene, Oregon	SP	1-26-57	1-26-57	6	3
17. SP 680908	1-22-57	Portland, Oregon	SP	1-23-57	1-23-57	4	2
18. SP 190413	1-22-57	Ashland, Oregon	SP	1-25-57	1-25-57	6	3
19. SP 680744	1-22-57	Cocoa Bay, Oregon	SP	1-25-57	1-25-57	3	2
20. SP 680787	1-22-57	Hillsboro, Oregon	SP	1-26-57	1-26-57	7	3
21. SP 683367	1-23-57	Mesa, Arizona	SP	1-28-57	1-28-57	6	3
22. SP 65697	1-23-57	Tucson, Arizona	SP	1-25-57	1-25-57	2	1
23. SP 683554	1-23-57	Tuma, Arizona	SP	1-25-57	1-25-57	3	1
24. SP 190331	1-23-57	Portland, Oregon	SP	1-24-57	1-24-57	1	1
25. SP 681327	1-23-57	Eugene, Oregon	SP	1-27-57	1-28-57	5	2
26. SP 680800	1-23-57	Medford, Oregon	SP	1-26-57	1-26-57	5	2
27. SP 64470	1-24-57	Reno, Nevada	SP	1-27-57	1-27-57	4	2
28. SP 681508	1-24-57	Reno, Nevada	SP	1-27-57	1-27-57	3	1
29. SP 682968	1-24-57	Portland, Oregon	SP	1-27-57	1-28-57	4	2
30. SP 683529	1-24-57	Portland, Oregon	SP	1-27-57	1-28-57	4	2
31. SP 683342	1-24-57	Portland, Oregon	SP	1-27-57	1-28-57	4	2
32. SP 683466	1-24-57	Portland, Oregon	SP	1-27-57	1-28-57	4	2
33. SP 682259	1-24-57	Ashland, Oregon	SP	1-28-57	1-29-57	4	2
34. SP 190067	1-24-57	Tuma, Arizona	SP	1-28-57	1-28-57	5	3
35. SP 190079	1-24-57	Phoenix, Arizona	SP	1-28-57	1-27-57	4	2
36. SP 682217	1-24-57	Phoenix, Arizona	SP	1-27-57	1-27-57	3	1
37. SP 65715	1-24-57	Mesa, Arizona	SP	1-26-57	1-26-57	4	1
38. SP 683475	1-24-57	Phoenix, Arizona	SP	1-26-57	1-26-57	2	1
39. SP 65976	1-25-57	Toledo, Oregon	SP	1-26-57	1-26-57	2	1
40. SP 190114	1-25-57	Portland, Oregon	SP	1-30-57	1-30-57	5	3
41. ATSF 9347	1-25-57	Eugene, Oregon	SP	1-28-57	1-29-57	4	3
42. SP 65624	1-25-57	Portland, Oregon	SP	1-28-57	1-28-57	3	2
43. SP 683339	1-25-57	Coeville, Oregon	SP	1-28-57	1-29-57	4	3
44. SP 680107	1-25-57	Phoenix, Arizona	SP	1-29-57	1-29-57	4	2
45. SP 682254	1-25-57	Tucson, Arizona	SP	1-27-57	1-27-57	4	1
46. SP 190248	1-25-57	Coolidge, Arizona	SP	1-27-57	1-28-57	2	1

\*Southern Pacific Company

Car Number (a)	Date of Shipment (b)	Destination (c)	Route (d)	Arrival Destination (e)	Delivery Destination (f)	Rail Transit Time (Days) (g)	Trackway Transit Time (Days) (h)
1. SP 69766	1-14-57	Reno, Nevada	SP *	1-17-57	1-17-57	3	1
2. SP 64322	1-14-57	Albany, Oregon	SP *	1-17-57	1-18-57	4	2
3. SP 682262	1-15-57	Salem, Oregon	SP *	1-18-57	1-19-57	4	2
4. SP 681933	1-21-57	Coe Bay, Oregon	SP *	1-25-57	1-26-57	5	2
5. SP 682238	1-21-57	Corvallis, Oregon	SP *	1-26-57	1-26-57	5	2
6. SP 65787	1-21-57	Madford, Oregon	SP *	1-24-57	1-25-57	4	2
7. SP 64993	1-23-57	Lordsburg, New Mexico	SP *	1-27-57	1-28-57	5	2
8. MET 45006	1-24-57	Rugene, Oregon	SP *	1-28-57	1-29-57	5	2
9. SP 683235	1-25-57	McMinnville, Oregon	SP *	1-31-57	2- 1-57	7	3
10. SP 681018	1-25-57	Hillsboro, Oregon	SP *	1-30-57	1-30-57	5	3
11. SP 680242	1-25-57	Oswego, Oregon	SP *	1-30-57	1-30-57	5	3


\* Southern Pacific Company



[fol. 736]

APPLICANT'S EXHIBIT 32

APPLICANT'S EXHIBIT 35

(See Opposite) 

[fol. 740]

Sheet 1 of 5 sheets

**PACIFIC MOTOR TRUCKING COMPANY****STATEMENT OF CONTRACT****CARRIER OPERATIONS FOR GENERAL MOTORS CORPORATION****COVERING PERIOD JANUARY 1, 1953 TO****NOVEMBER 30, 1956**

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## CONTRACT CARRIER OPERATIONS FOR

## GENERAL MOTORS CORPORATION

12 MONTHS ENDED DECEMBER 31, 1953

<u>Total Operating Revenues</u>	1 516 270 76
<u>Operating Expenses</u>	
<u>Equipment Maintenance</u>	
Repairs and servicing - Revenue Equipment	164 830 89
Tires and Tubes - Revenue Equipment	56 909 71
Other Maintenance Expenses	15 816 80
Total - Equipment Maintenance	237 557 40
<u>Transportation</u>	
Drivers and Helpers	514 064 57
Fuel and oil - Revenue Equipment	101 944 51
Other Transportation Expenses	90 184 27
Total - Transportation	706 193 35
<u>Terminal</u>	
Salaries and Fees - Billing and Collecting	20 581 92
Salaries and Wages - Platform Employees	36 476 66
Other Terminal Employees	41 644 52
Other Terminal Expenses	26 966 58
Total - Terminal	125 669 68
<u>Traffic</u>	
Total - Traffic	8 696 91
<u>Insurance and Safety</u>	
Total - Insurance and Safety	26 286 89
<u>Administrative and General</u>	
Employees' Welfare Expenses	10 489 39
Other General Expenses	74 070 11
Total - Administrative and General	84 559 50
Grand Total - Operation and Maintenance Expenses	1 188 963 73
Depreciation Expense	47 332 72
Operating Taxes and Licenses	82 813 84
Other Income - Credit	(Cr.) 12 40
Income Taxes	106 473 36
Total Expenses and Other Income	1 425 571 25
Net Income	90 699 51

[fol. 742]

Sheet 3 of 5 sheets

## CONTRACT CARRIER OPERATIONS FOR

## GENERAL MOTORS CORPORATION

12 MONTHS ENDED DECEMBER 31, 1954

<u>Total Operating Revenues</u>	1 523 502 36
<u>Operating Expenses</u>	
<u>Equipment Maintenance</u>	
Repairs and Servicing - Revenue Equipment	126 052 35
Tires and Tubes - Revenue Equipment	29 618 40
Other Maintenance Expenses	19 945 76
Total - Equipment Maintenance	175 616 51
<u>Transportation</u>	
Drivers and Helpers	477 941 43
Fuel and oil - Revenue Equipment	98 377 56
Other Transportation Expenses	80 974 74
Total - Transportation	657 293 73
<u>Terminal</u>	
Salaries and Fees - Billing and Collecting	19 678 32
Salaries and Wages - Platform Employees	50 667 50
Other Terminal Employees	1 599 24
Other Terminal Expenses	52 018 73
Total - Terminal	123 963 79
<u>Traffic</u>	
Total - Traffic	11 218 61
<u>Insurance and Safety</u>	
Total - Insurance and Safety	27 185 37
<u>Administrative and General</u>	
Employees' Welfare Expenses	12 254 31
Other General Expenses	80 930 77
Total - Administrative and General	93 185 08
Grand Total - Operation and Maintenance Expenses	1 088 463 09
Extraordinary Income - Debit	19 797 44
Depreciation Expense	50 392 87
Operating Taxes and Licenses	116 158 89
Other Income - Credit	(Cr.) 9 40
Income Taxes	129 323 71
Total Expenses and Other Income	1 404 126 60
Net Income	119 375 76

\* Represents liability for vacation allowances earned in year 1954 and allowed in year 1955.



CONTRACT CARRIER OPERATIONS FOR  
GENERAL MOTORS CORPORATION

12 MONTHS ENDED DECEMBER 31, 1955

<u>Total Operating Revenues</u>	2 755 537 51
<u>Operating Expenses</u>	
<u>Equipment Maintenance</u>	
Repairs and Servicing - Revenue Equipment	212 852 61
Tires and Tubes - Revenue Equipment	142 707 74
Other Maintenance Expenses	27 421 39
Total - Equipment Maintenance	382 981 74
<u>Transportation</u>	
Drivers and Helpers	924 986 08
Fuel and oil - Revenue Equipment	168 189 13
Other Transportation Expenses	190 342 00
Total - Transportation	1 283 517 21
<u>Terminal</u>	
Salaries and Fees - Billing and Collecting	48 002 57
Salaries and Wages - Platform Employees	99 745 78
Other Terminal Employees	100 101 50
Other Terminal Expenses	41 706 34
Total - Terminal	289 556 19
<u>Traffic</u>	
Total - Traffic	12 290 31
<u>Insurance and Safety</u>	
Total - Insurance and Safety	30 245 87
<u>Administrative and General</u>	
Employees' Welfare Expenses	33 263 33
Other General Expenses	81 001 12
Total - Administrative and General	114 264 45
Grand Total - Operation and Maintenance Expenses	2 112 855 77
Depreciation Expense	71 073 90
Operating Taxes and Licenses	207 279 64
Other Income - Credit	(Cr.) 4 95
Income Taxes	189 453 23
Total Expenses and Other Income	2 580 657 59
Net Income	174 879 92

## CONTRACT CARRIER OPERATIONS FOR

GENERAL MOTORS CORPORATION

12 MONTHS ENDED NOVEMBER 30, 1956

<u>Total Operating Revenues</u>	2 008 214 40
<u>Operating Expenses</u>	
<u>Equipment Maintenance</u>	
Repairs and Servicing - Revenue Equipment	139 317 23
Tires and Tubes - Revenue Equipment	56 392 09
Other Maintenance Expenses	27 383 31
Total - Equipment Maintenance	223 092 63
<u>Transportation</u>	
Drivers and Helpers	655 738 77
Fuel and oil - Revenue Equipment	130 779 08
Other Transportation Expenses	88 595 10
Total - Transportation	875 112 95
<u>Terminal</u>	
Salaries and Fees - Billing and Collecting	23 295 11
Salaries and Wages - Platform Employees	51 826 49
Other Terminal Employees	65 209 00
Other Terminal Expenses	46 360 90
Total - Terminal	186 691 50
<u>Traffic</u>	
Total - Traffic	18 478 82
<u>Insurance and Safety</u>	
Total - Insurance and Safety	49 267 88
<u>Administrative and General</u>	
Employees' Welfare Expenses	36 696 93
Other General Expenses	97 812 45
Total - Administrative and General	134 509 38
Grand Total - Operation and Maintenance Expenses	1 487 153 16
Other Deductions	6 00
Depreciation Expense	145 588 47
Operating Taxes and Licenses	142 172 61
Other Income - Credit	(Cr.) 7 80
Income Taxes	128 794 84
Total Expenses and Other Income	1 903 707 28
Net Income	104 507 12

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PACIFIC MOTOR TRUCKING COMPANY

Operating Ratio - Contract

Carrier Operations for General Motors Corporation

<u>Year</u>	<u>Operating Revenues</u>	<u>Operating Expenses (Excludes Income Taxes)</u>	<u>Operating Ratio</u>
1953	\$1 516 271	\$1 319 098	87.0
1954	1 523 502	1 274 803	83.7
1955	2 755 538	2 391 204	86.8
1956	2 236 989	1 967 103	87.9

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## APPLICANT'S EXHIBIT 37

PACIFIC MOTOR TRUCKING COMPANY INVESTMENT  
AS OF DECEMBER 31, 1956  
IN FACILITIES USED IN CONTRACT CARRIER OPERATIONS  
FOR GENERAL MOTORS CORPORATION

	<u>Investment</u>	<u>Accrued Depreciation</u>	<u>Depreciated Value</u>
	<u>M E L R O S E</u>		
Equipment	\$314 892 78	\$90 536 93	\$224 355 85
Other	18 527 71	2 191 85	16 335 86
Total	\$333 420 49	\$92 728 78	\$240 691 71

	<u>R A Y M E R</u>		
Equipment	\$588 052 49	\$151 216 92	\$436 835 57
Other	2 190 03	1 959 80	230 23
Total	\$590 242 52	\$153 176 72	\$437 065 80

	<u>S O U T H G A T E</u>		
Equipment	\$451 060 88	\$78 447 11	\$372 613 77
Other	1 504 76	1 155 57	349 19
Total	\$452 565 64	\$79 602 68	\$372 962 96

Grand Total	\$1 376 228 65	\$325 508 18	\$1 050 720 47
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[fol. 747]

# APPLICANT'S EXHIBIT 38

AUTOMOTIVE UNITS TRANSPORTED BY PACIFIC MOTOR TRUCKING COMPANY  
AND GROSS FREIGHT REVENUES  
FROM CONTRACT CARRIER OPERATIONS WITH  
GENERAL MOTORS CORPORATION

	<u>Number of Units</u>	<u>PMT Revenue</u>
<u>Year 1955</u>		
Melrose	67 106	\$ 861 090
Raymer	108 485	962 086
South Gate	<u>117 052</u>	<u>922 101</u>
Total Year 1955	<u>292 643</u>	<u>\$2 745 277</u>

## January 1 - June 30, 1956

Melrose	29 782	\$ 402 032
Raymer	52 852	517 386
South Gate	<u>36 093</u>	<u>276 789</u>
Total January 1 - June 30, 1956	<u>118 727</u>	<u>\$1 196 207</u>



[fol. 748]

## PROTESTANT'S EXHIBIT 45

Statement showing number of carloads and tons, together with division of freight revenue, on automobiles originating in the State of California and terminating at stations on the S.P. & S. Ry. Co., O.E. Ry. Co. and O.T. Ry. in the states of Oregon and Washington for the year

1956

<u>STATE</u>	<u>CARLOADS</u>	<u>TONS</u>	<u>DIVISION OF FREIGHT REVENUE</u>
Oregon	284	1,884.4	19,332.03
Washington	507	3,412.1	43,289.94
	<hr/>	<hr/>	<hr/>
Total	791	5,296.5	62,621.97

## PROTESTANT'S EXHIBIT 46

EXHIBIT SHOWING TIME IN TRANSIT OF CARS OF AUTOMOBILES SHIPPED  
FROM CALIFORNIA ORIGIN TO DESTINATION ON THE SPokane, PORTLAND AND SEATTLE RAILWAY COMPANY, 1956 INCL.  
OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY FOR THE SEVEN DAY PERIOD OCTOBER 11 TO OCTOBER 13, 1956 INCL.

Car Number	Commodity	Weight	Origin	Destination	Routing	Waybill No.	Actual Date	Actual Time	Actual Placement	Days En-Route	Days Enroute to Placement Including Delivery	Remarks
SP 66115	Automobiles	11493	Los Angeles, Calif.	Vancouver, Wash.	SP-SFS	62512	10/7	830A	10/11	100P	10/11	4
ATSF 9123	"	11280	"	"	SP-SFS	62525	10/8	515A	10/12	1000A	10/12	4
SP 190076	"	13110	Oakland, Calif.	Spokane, Wash.	SP-SFS	73607	10/8	1135A	10/13	915A	10/15	5
SP 190187	"	13636	"	Astoria, Oregon	SP-SFS	73611	10/8	1104A	10/12	800A	10/12	4
SP 192230	"	13653	"	Goldsedale, Wash.	SP-SFS	73669	10/8	530P	10/12	530P	10/12	4
SP 190413	"	13361	"	St. Helens, Ore.	SP-SFS	73777	10/9	1130P	10/12	1000A	10/13	3
SP 64165	"	13634	"	Washougal, Wash.	SP-SFS	73732	10/9	940A	10/13	500A	10/14	4
SP 65118	"	13713	"	Vancouver, Wash.	SP-SFS	73747	10/9	515A	10/12	1000A	10/12	3
SP 192213	"	13105	"	"	SP-SFS	73772	10/9	515A	10/12	1000A	10/12	3
SP 66054	"	10112	"	Clatskanie, Ore.	SP-SFS	73824	10/10	150A	10/15	200A	10/15	5
SP 66058	"	10050	"	Seaside, Oregon	SP-SFS	73825	10/10	525A	10/15	600A	10/15	5
C40 6151	"	10057	"	Stevenson, Wash.	SP-SFS	73811	10/10	1250P	10/15	200P	10/15	5
SP 581926	"	10857	"	Vernonia, Ore.	SP-SFS	73842	10/10	340P	10/15	400P	10/15	5
SP 190321	"	11502	"	Pasco, Wash.	SP-SFS	73862	10/10	655A	10/14	900A	10/15	5
SP 70004	"	13466	"	Reinier, Oregon	SP-SFS	73864	10/10	100A	10/15	90A	10/15	5
SP 65436	"	14129	Raymer B/A	Pasco, Wash.	SP-SFS	53053	10/10	1245A	10/16	1100A	10/17	7
SP 682938	"	14140	Van Nuys, Calif.	Spokane, Wash.	SP-SFS	62536	10/11	405P	10/16	915A	10/17	6
SP 682294	"	13459	Los Angeles, Calif.	Redmond, Oregon	SP-SFS-OT	73932	10/11	1140A	10/15	600P	10/15	4
SP 69680	"	10316	Oakland, Calif.	Sweet Home, Ore.	WF-ON-OR	8180	10/11	500P	10/16	500P	10/16	5
SP 65584	"	10398	"	Vancouver, Wash.	SP-SFS	74002	10/12	715A	10/15	900A	10/15	3
SP 64113	"	10454	"	Astoria, Oregon	SP-SFS	74027	10/12	345A	10/16	800A	10/16	4

Note 1. SP 190076 was delivered to the Nor. Pac. at Yardley, Wash. 11:55 AM, October 13th. Placed for unloading at 3:15 PM, October 15th.

Note 2. SP 682938 was delivered to the Nor. Pac. at Yardley, Wash. 1:25 PM, October 16th. Placed for unloading at 9:15 AM, October 17th.

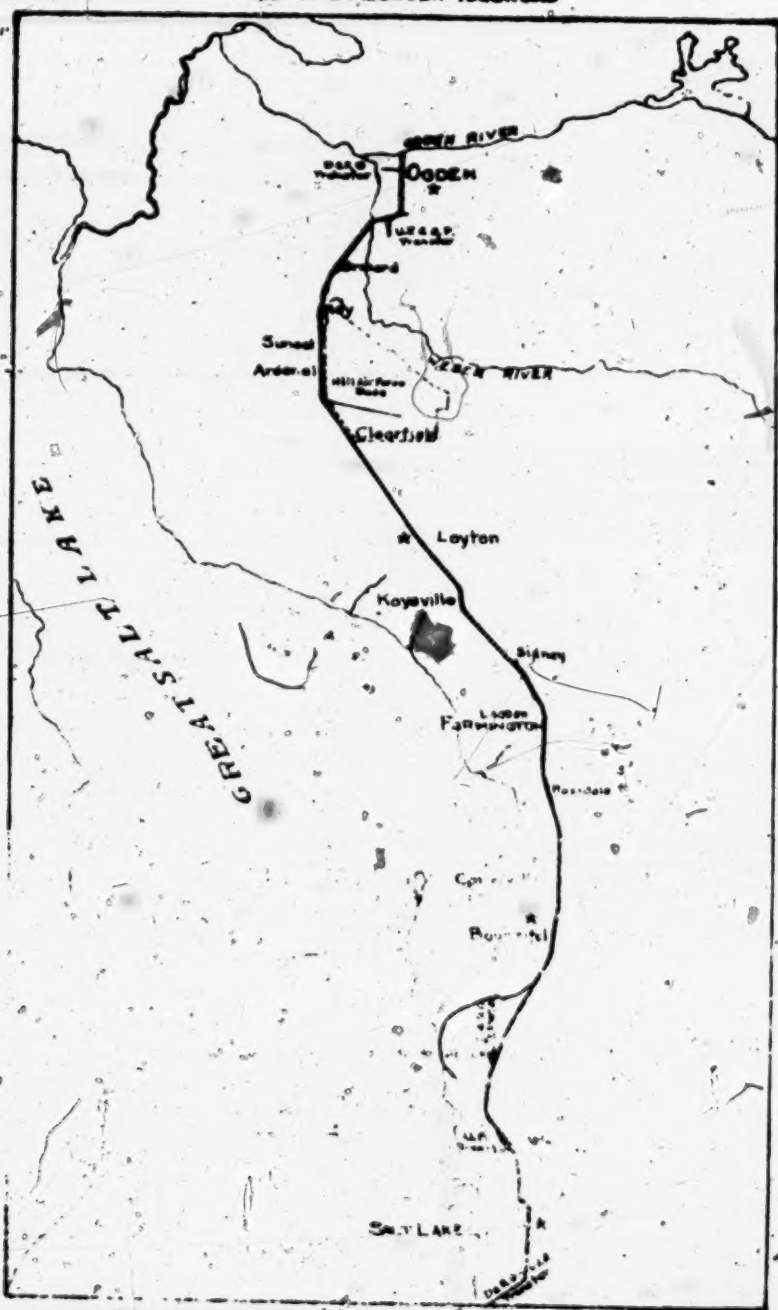
[fol. 750]

## PROTESTANT'S EXHIBIT 50

## INDEX

- Sheet 1 - Map showing length of Bamberger R.R. main line, cities and areas served, and locations of automobile unloading docks.
- Sheet 2 - List of Agency and Prepay Stations showing freight junctions with connecting Railroads.
- Sheet 3 - Consolidated Statement of Improvements Completed or In Course of Construction on Bamberger's Main Line from 1952 to Present.
- Sheet 4 - Recapitulation Sheet for 1956 showing number of freight cars of automobiles handled by Bamberger Company from Raymer, Oakland, and South Gate, California, total freight involved, and Bamberger's division thereof.
- 750

## MAP OF SANDERSON RAILROAD



\* Indicates Locations of Auto Unloading Decks

## RECAPITULATION 1956

Month	Number of Cars	Freight	Bamberger Proportion
January	5	\$ 1348.27	175.27
February	23	6214.84	807.94
March	24	6791.57	884.06
April	20	6051.78	786.72
May	21	6182.79	815.60
June	17	5107.78	663.33
July	13	4398.33	619.76
August	11	3196.64	415.56
September	12	3342.94	444.74
October	13	3722.04	483.85
November	12	3384.74	440.00
December	14	3247.40	537.34
	<u>185</u>	<u>\$53688.29</u>	<u>7074.17</u>



PROTESTANT'S EXHIBIT 51

(See Opposite)



[fol. 753]



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PROTESTANT'S EXHIBIT 55

(See Opposite)

[fol. 754]

STATEMENT SHOWING NUMBER OF CARLOADS AND TONS,  
TOGETHER WITH PORTLAND TRACTION COMPANY  
(PORTLAND RAILROAD AND TERMINAL DIVISION)  
REVENUE ON AUTOMOBILES WHICH ORIGINATED IN THE  
STATE OF CALIFORNIA AND TERMINATED AT STATIONS  
ON THE PORTLAND TRACTION COMPANY DURING THE YEAR 1956.

<u>STATE</u>	<u>CARLOADS</u>	<u>TONS</u>	<u>P. T. CO. DIVISION OF REVENUE</u>
Oregon	3137	21,631.18	\$67,002.09

January 31, 1957

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EXHIBIT SHOWING TIME IN TRANSIT OF CARLOADS OF AUTOMOBILES SHIPPED FROM  
CALIFORNIA ORIGINS TO DESTINATIONS ON THE PORTLAND TRACTION COMPANY (PORTLAND RAILROAD AND TERMINAL DIVISION)  
FOR THE SEVEN DAY PERIOD MARCH 11 TO MARCH 17, 1956, INCLUSIVE

Car Number	Commodity	Weight	Origin	Destination	Waybill Date	Arrival		Actual		Days En- route	Days Enroute to Placement Including Delivery
						Destination Date	Time	Placement Date	Time		
NYC 64648	Automobiles	13882	Oakland, Calif.	East Portland, Ore.	3/12	400A	3/15	AM	3/15	3	3
SP 66038	"	14320	"	"	3/12	400A	3/15	AM	3/15	3	3
SP 64055	"	13710	"	"	3/12	400A	3/15	AM	3/15	3	3
SP 65868	"	14058	"	"	3/12	400A	3/15	AM	3/15	3	3
SP 63749	"	13175	"	"	3/12	400A	3/15	AM	3/15	3	3
ATSF 9105	"	13595	Los Angeles, Calif.	"	3/12	900A	3/16	PM	3/16	4	4
CNW 51294	"	14633	"	"	3/12	900A	3/16	PM	3/16	4	4
ATSF 9383	"	11165	"	"	3/12	900A	3/16	PM	3/16	4	4
SP 683168	"	15048	"	"	3/12	440A	3/17	AM	3/19	5	7
SP 65932	"	17205	"	"	3/12	530A	3/17	AM	3/17	5	5
NYC 62476	"	14759	"	"	3/12	600A	3/16	AM	3/16	4	4
SP 65383	"	13527	Oakland, Calif.	"	3/12	400A	3/15	AM	3/15	3	3
SP 190142	"	13829	Van Nuys, Calif.	"	3/12	600A	3/16	AM	3/16	4	4
NYC 66146	"	12886	Oakland, Calif.	Gresham, Ore.	3/12	230P	3/15	PM	3/15	3	3
NYC 65158	"	13355	"	Oregon City, Ore.	3/12	1140P	3/15	AM	3/16	3	4
ATSF 9292	"	12610	Los Angeles, Calif.	East Portland, Ore.	3/13	630A	3/17	AM	3/17	4	4
ATSF 9104	"	13499	"	"	3/13	630A	3/17	AM	3/17	4	4
UP 455637	"	11925	"	"	3/13	530A	3/17	AM	3/17	4	4
SP 69549	"	16150	"	"	3/13	930P	3/17	PM	3/18	4	5
SP 64275	"	14810	"	"	3/13	930P	3/17	PM	3/19	4	6
SP 680478	"	14562	"	"	3/13	930P	3/17	PM	3/19	4	6
SP 192476	"	16290	"	"	3/13	1000A	3/17	AM	3/19	4	6
ATSF 9058	"	14941	"	"	3/13	530A	3/17	AM	3/17	4	4
SP 64423	"	16695	"	"	3/13	530A	3/17	AM	3/17	4	4
SP 65871	"	12135	"	"	3/13	1230P	3/17	AM	3/19	4	6

PROTESTANT'S EXHIBIT 56

Continued on Page 2

[fol. 755]

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Car Number	Commodity	Weight	Origin	Destination	Waybill Date	Arrival		Actual		Days Enroute	Days Enroute to Placement Including Delivery
						Destination	Time	Placement	Time	route	
SP 65571	Automobiles	11004	Los Angeles, Calif.	East Portland, Ore.	3/13	1230P	3/17	PM	3/19	4	6
SP 193700	"	15733	"	"	3/13	1230P	3/17	PM	3/19	4	6
SP 193634	"	15764	"	"	3/13	530A	3/17	AM	3/20	4	7
SP 65505	"	15608	"	"	3/13	530A	3/17	AM	3/17	4	4
SP 653344	"	15600	"	"	3/13	1230P	3/17	PM	3/19	4	6
SP 193900	"	15605	Oakland, Calif.	"	3/13	600A	3/16	AM	3/16	3	3
SP 65481	"	15528	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 64343	"	15706	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 63650	"	15104	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 63364	"	15064	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 64335	"	15142	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 64072	"	15094	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 64634	"	15126	"	"	3/13	600A	3/16	AM	3/16	3	3
SP 64214	"	15649	Van Nuys, Calif.	"	3/13	1230P	3/17	PM	3/19	4	6
SP 64220	"	15767	"	"	3/13	1230P	3/17	PM	3/19	4	6
SP 190004	"	15604	"	"	3/13	1230P	3/17	PM	3/20	4	7
SP 65442	"	15604	"	"	3/13	1230P	3/17	PM	3/20	4	6
SP 65405	"	16405	Los Angeles, Calif.	Gresham, Ore.	3/13	330P	3/19	PM	3/19	6	6
SP 64500	"	16410	"	"	3/13	330P	3/19	PM	3/19	6	6
SP 63400	"	15101	Oakland, Calif.	"	3/13	300P	3/16	PM	3/16	3	3
SP 150002	"	16025	Los Angeles, Calif.	Oregon City, Ore.	3/13	300A	3/19	AM	3/19	6	6
SP 64600	"	15812	Oakland, Calif.	"	3/13	1150P	3/16	AM	3/17	4	5
SP 67106	"	15467	"	"	3/13	1150P	3/16	AM	3/17	4	5
SP 19300	"	15700	Los Angeles, Calif.	East Portland, Ore.	3/14	630A	3/18	PM	3/18	4	4
SP 67157	"	15010	"	"	3/14	630A	3/18	PM	3/18	4	4
SP 6420	"	11504	"	"	3/14	630A	3/18	PM	3/18	4	4
SP 193004	"	11451	"	"	3/14	930P	3/17	PM	3/19	3	5
SP 655700	"	15005	"	"	3/14	930P	3/17	PM	3/19	3	5
SP 67197	"	11655	"	"	3/14	750P	3/17	PM	3/20	3	6
SP 65004	"	13075	"	"	3/14	100P	3/17	PM	3/20	3	6
SP 65000	"	13505	"	"	3/14	800A	3/21	AM	3/21	7	7
SP 193000	"	15000	Oakland, Calif.	"	3/14	1230P	3/17	PM	3/19	3	5

Continued on Page 3

Car Number	Commodity	Weight	Origin	Destination	Maybill Date	Arrival Destination Time	Actual Placement Date	Days En- route	Days Enroute to Placement Including Delivery
SP 883399	Automobiles	13308	Oakland, Calif.	East Portland, Ore.	3/14	530A 3/17 AM	3/17	3	3
SP 680637	"	13175	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 683301	"	13317	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 64308	"	13278	"	"	3/14	530A 3/17 AM	3/17	3	3
Milw 14115	"	13437	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 64133	"	13498	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 190381	"	13187	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 65983	"	16036	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 65048	"	16068	"	"	3/14	1230P 3/17 AM	3/19	3	5
SP 64413	"	13999	"	"	3/14	530A 3/17 AM	3/17	3	3
NYC 64532	"	13347	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 683384	"	13848	"	"	3/14	530A 3/17 AM	3/17	3	3
SP 190089	"	13753	Van Nuys, Calif.	"	3/14	510A 3/19 AM	3/20	3	6
SP 190878	"	16335	Los Angeles, Calif.	Gresham, Ore.	3/14	330P 3/19 PM	3/19	3	5
MEP 24947	"	13380	"	Gresham City, Ore.	3/14	200A 3/19 AM	3/19	3	5
SP 65983	"	16730	"	"	3/14	600A 3/20 AM	3/20	4	6
ATW 9108	"	13580	"	East Portland, Ore.	3/15	630A 3/19 AM	3/19	4	4
SP 190473	"	15080	"	"	3/15	510A 3/19 PM	3/19	4	4
SP 190413	"	15100	"	"	3/15	640A 3/19 PM	3/20	4	5
SP 681991	"	15314	"	"	3/15	510A 3/19 PM	3/20	4	5
SP 63534	"	11513	"	"	3/15	600A 3/19 AM	3/20	4	5
SP 153939	"	14943	"	"	3/15	510A 3/19 PM	3/19	4	4
SP 69945	"	15045	"	"	3/15	600A 3/19 AM	3/20	4	5
ATW 9408	"	16320	"	"	3/15	510A 3/19 PM	3/20	4	5
SP 190496	"	11338	"	"	3/15	510A 3/19 PM	3/20	4	5
SP 65653	"	10994	"	"	3/15	510A 3/19 PM	3/20	4	5
SP 193098	"	13458	Oakland, Calif.	"	3/15	600A 3/19 PM	3/19	3	4
UP 653660	"	13471	"	"	3/15	600A 3/19 PM	3/19	3	4
SP 65443	"	15230	"	"	3/15	600A 3/19 PM	3/19	3	3
SP 65403	"	13498	"	"	3/15	530A 3/19 AM	3/19	3	3
SP 193918	"	13497	"	"	3/15	630P 3/19 PM	3/19	3	3
SP 64183	"	13537	Van Nuys, Calif.	"	3/15	600P 3/19 PM	3/19	4	5
TP 73068	"	16075	Los Angeles, Calif.	Gresham, Ore.	3/15	345P 3/20 PM	3/20	3	5

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Car Number	Commodity	Weight	Origin	Destination	Waybill Date	Arrival		Actual Placement		Days Enroute	Days Enroute to Placement Including Delivery
						Time	Date	Time	Date		
SP 65562	Automobiles	13374	Oakland, Calif.	Gresham, Ore.	3/15	250P	3/19	PM	3/19	4	4
SP 682304	"	13483	"	Oregon City, Ore.	3/15	200A	3/19	AM	3/19	4	4
UP 455725	"	13573	"	"	3/15	200A	3/19	AM	3/19	4	4
ATSF 9275	"	13840	Los Angeles, Calif.	East Portland, Ore.	3/16	630A	3/20	AM	3/20	4	4
ATSF 9122	"	14515	"	"	3/16	630A	3/20	AM	3/20	4	4
UP 455998	"	16265	"	"	3/16	230P	3/19	AM	3/20	3	4
NYC 68016	"	11394	"	"	3/16	600A	3/19	PM	3/20	3	4
SP 683348	"	15237	"	"	3/16	600A	3/20	PM	3/20	4	4
SP 65611	"	14961	"	"	3/16	500A	3/21	PM	3/21	5	5
SP 65680	"	17010	"	"	3/16	500A	3/21	AM	3/21	5	5
SP 6561	"	16355	"	"	3/16	500A	3/21	PM	3/21	5	5
SP 198812	"	16430	"	"	3/16	600A	3/20	AM	3/21	4	5
SP 69624	"	15215	"	"	3/16	500A	3/21	AM	3/21	5	5
SP 63451	"	11970	"	"	3/16	600A	3/20	AM	3/21	4	5
DEM 46366	"	11593	"	"	3/16	600A	3/20	AM	3/21	4	5
NYC 64998	"	12139	"	"	3/16	600A	3/20	AM	3/21	4	5
UP 455720	"	12620	Oakland, Calif.	"	3/16	600A	3/20	AM	3/21	4	5
BAO 298794	"	13468	"	"	3/16	510A	3/19	PM	3/20	3	4
SP 65844	"	13463	"	"	3/16	510A	3/19	AM	3/20	3	4
SP 190342	"	15195	"	"	3/16	510A	3/19	AM	3/20	3	4
UP 455917	"	13969	"	"	3/16	510A	3/19	AM	3/21	3	5
SP 63378	"	13637	Van Nuys, Calif.	"	3/16	600A	3/20	PM	3/20	4	4
SP 63411	"	11476	Los Angeles, Calif.	"	3/17	500A	3/21	PM	3/21	4	4
SP 64434	"	16255	"	"	3/17	500A	3/21	PM	3/21	4	4
SP 63540	"	12422	"	"	3/17	500A	3/21	PM	3/21	4	4
SP 680181	"	11467	"	"	3/17	500A	3/21	PM	3/21	4	4
BAO 296158	"	16530	"	"	3/17	500A	3/21	PM	3/21	4	4

January 31, 1957

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PROTESTANT'S EXHIBIT 60

Docket No. MC-78787 - Sub. 37

Pacific Motor Trucking Co.

UNION PACIFIC RAILROAD COMPANY

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[fol. 760]

## PART

- A System map of the Union Pacific Railroad. Circles indicate interchange points where the Union Pacific would receive involved traffic from origin line. Green boundary indicates states involved. Map also shows locations of assembly plants involved.
- B Statement of equipment owned and on order by the Union Pacific Railroad suitable for movement of new automobiles, trucks and buses.
- C List of open and prepaid stations in California, Nevada, Utah, Idaho, Montana, Oregon and Washington. (11 pages)
- D List of stations in California, Nevada, Utah, Idaho, Montana, Oregon and Washington having facilities for unloading automobiles, trucks and buses. (11 pages)
- E Freight train schedules from points where Union Pacific would normally receive such traffic to representative points in the destination states involved. (5 pages)
- F Statement showing transit time during one week period of shipments of involved traffic originating in California to points in destination states involved. (2 pages)
- G Expenditures for improvements and betterments during years 1946 through 1955. (14 pages)
- H Statement of additions of maintenance equipment during years 1951 to 1955 inclusive and estimated expenditures for roadway and structures and for maintenance equipment during 1957.
- I Additions to equipment during past five years and cost thereof and estimated expenditures during 1957.
- J Statement showing the number of automobile cars equipped with auto racks owned by certain western railroads.

STATEMENT OF ONE YEAR PERIOD JANUARY 1, 1956 to JANUARY 7, 1956. TOTAL OF SIXTY-THREE OF LICENSED TRAFFIC OPERATING IN CALIFORNIA TO POINTS ON OTHER LINES IN NORTHERN CALIFORNIA JANUARY 1, 1956 to JANUARY 11, 1956. TOTAL OF FORTY-ONE ON SAN JOSE PACIFIC RAILROAD IN NORTHERN CALIFORNIA.

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[fol. 761]

PART II

War Initial and Number	Point of Origin	Sailing Date	Destination	Received from Connected Carrier				Received				Arriv. Date, or (Mo., Day, Date, to Connecting Carrier)		Placed		Delivered to Connected Carrier		
				Steamer	At	Time	Date	Steamer	At	Time	Date	Time	Date	At	Time	Date		
SP 69000	Galveston, Calif.	8-1-36	San Jose, W.	SP-69-000	2. Portland, Ore.	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69200	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69400	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69600	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69800	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11:50	8-1-36	8:40	8-1-36	-	-	Chasula, W.	9:00	8-1-36		
SP 69900	"	8-1-36	San Jose, W.	SP-69-000	"	8:40	8-1-36	11										

[fol. 762]

[fol. 763]

**PROTESTANT'S EXHIBIT 62**  
**UNION PACIFIC RAILROAD COMPANY**  
 (Including its leased lines)

Volume of Traffic of New Automobiles, Trucks and Buses  
 Originated in California and Terminated on the Union  
 Pacific in Specified States During the Period  
 September 1, 1955 through August 31, 1956.

Line	Destination State (a)	Cars (b)	Tons (c)	(Even Dollars) Union Pacific Revenue (d)
1	Idaho	1 779	12 464	431 789
2	Nevada	412	2 980	60 913
3	Montana	9	65	5 964
4	Oregon	1 284	8 750	126 154
5	Utah	1 206	8 426	262 244
6	Washington	2 667	19 081	257 891
7	Total	7 351	51 766	1 144 955

Vice President and General Auditor's Office,  
 Omaha, Nebraska, February 15, 1957.  
 (F 811-2943)

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[fol. 764]

**PROTESTANT'S EXHIBIT 63**  
**UNION PACIFIC RAILROAD COMPANY**  
 (Including its leased lines)

Volume of Traffic of New Automobiles, Trucks and Buses Originated  
 In California and Delivered to Connecting Carriers During  
 the Period September 1, 1955 through August 31, 1956

Line	Destination State (a)	Cars (b)	Tons (c)	(Even Dollars) Union Pacific Revenue (d)
1	Idaho	123	848	15 747
2	Nevada	2	14	608
3	Montana	56	390	23 855
4	Oregon	63	421	11 108
5	Utah	259	1 816	50 230
6	Washington	125	887	9 455
7	Total	628	4 376	111 003

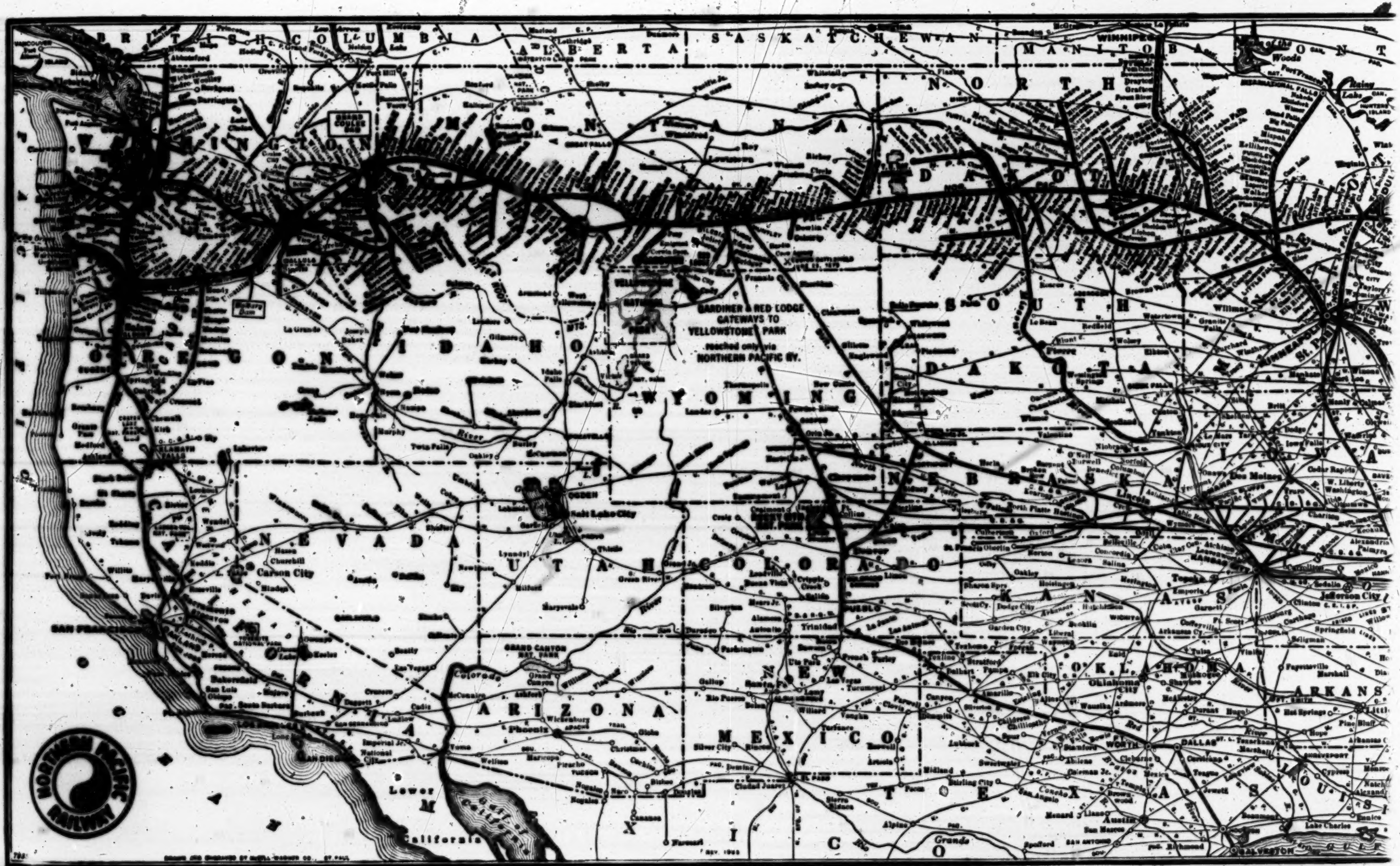
Vice President and General Auditor's Office,  
 Omaha, Nebraska, February 15, 1957.  
 (F 811-2943)

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PROTESTANT'S EXHIBIT 70

(See Opposite)





Ex 70





[fol. 765]

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(See Opposite)

NORTHERN PACIFIC RAILWAY COMPANY  
Office General Superintendent Transportation

TIME AND TRANSIT STUDY OF PASSENGER AUTOMOBILES AND TRUCKS SHIPPED OUT OF CALIFORNIA TO POINTS IN  
OREGON, WASHINGTON, IDAHO AND MONTANA PERIOD AUGUST 1 TO AUGUST 15, 1934 INCLUSIVE

Item	Waybill Number	Date	Car	Lot	Number	Commodity	Weight	Routing	Point of Origin	Destination	Arrival Time	Date	Deld. Comm. Carrier for	Actual Time	Date	Days Enroute to Placement	Days Enroute to Placement Including Delivery	Remarks
1	53181	8/7	SP		680238	Pass. Autos	11114	SP-SP	Los Angeles, Calif.	Fondleton, Ore.	1100A	8/14		1200P	8/14	7	7	Note 1
2	68987	8/9	SP		65963	"	13266	"	Oakland, Calif.	Aberdeen, Wn.	630A	8/13		830A	8/13	4	4	
3	60639	8/13	SP		683510	"	16360	"	Los Angeles, Calif.	Arlington, Wn.	700P	8/20		800P	8/20	5	5	
4	60271	8/7	SP		680018	"	15910	"	"	Auburn, Wn.	620A	8/11		1100A	8/11	4	4	
5	60275	8/7	SP		190139	"	16020	"	"	"	620A	8/11		1100A	8/11	4	4	
6	60622	8/13	SP		193726	"	14720	"	"	"	550A	8/19		1120A	8/20	4	4	Note 3
7	60543	8/13	SP		64279	"	12080	"	"	"	615A	8/17		1130A	8/17	4	4	
8	53172	8/6	SP		680678	"	11372	"	"	Wellington, Wn.	850A	8/11		900A	8/11	5	5	
9	60231	8/6	SP		69712	"	12650	"	"	"	850A	8/11		900A	8/11	5	5	
10	69356	8/14	SP		190470	"	13374	"	Oakland, Calif.	"	915A	8/20		900A	8/20	6	6	
11	68283	8/1	SP		683279	Autos Mixed	13667	"	"	"	150A	8/6		900A	8/6	5	5	
12	60441	8/10	ATSP		9213	Pass. Autos	16905	"	Los Angeles, Calif.	Belleuve, Wn.	1050A	8/15		1000A	8/20	5	10	Note 3
13	68387	8/2	SP		683367	"	13617	"	Oakland, Calif.	"	1155A	8/6		1135A	8/6	4	4	
14	68500	8/3	SP		69532	"	13987	"	"	"	135A	8/6		A.M.	8/8	3	3	Note 4
15	53147	8/2	SP		65581	"	10000	"	Los Angeles, Calif.	Bothell, Wn.	445P	8/7		445P	8/7	5	5	
16	53174	8/7	SP		190110	"	13269	"	"	"	145P	8/12		145P	8/12	5	5	
17	68781	8/7	SP		680234	"	13576	"	Oakland, Calif.	"	145P	8/12		145P	8/12	5	5	
18	69091	8/10	SP		682060	"	13492	"	"	"	350P	8/14		350P	8/14	4	4	
19	69376	8/14	SP		680579	Autos Mixed	13661	"	"	"	1201P	8/19		1201P	8/19	5	5	
20	68976	8/9	SP		65158	"	13386	"	"	Bremerton, Wn.	1215P	8/14		100P	8/14	5	5	
21	68782	8/7	SP		190294	"	15211	"	"	"	1130A	8/11		1130A	8/11	4	4	
22	68771	8/7	SP		190228	"	13658	"	"	"	1130A	8/11		1130A	8/11	4	4	
23	53209	8/10	SP		190368	Pass. Autos	11321	"	Los Angeles, Calif.	"	120P	8/16		400A	8/17	6	7	Note 5
24	53146	8/2	SP		190168	"	15052	"	"	"	920P	8/7		900A	8/8	5	6	
25	68479	8/1	SP		192811	Autos Mixed	14062	"	Oakland, Calif.	"	920P	8/7		900A	8/8	5	6	
26	68783	8/7	SP		680332	"	13613	"	"	Chenille, Wn.	815A	8/10		900A	8/10	3	3	
27	51570	8/9	SP		19320	Pass. Autos	10532	"	Wapinitia, Calif.	Cle Elum, Wn.	1110P	8/13		800A	8/14	4	5	
28	68989	8/2	SP		64973	Prt. Autos	15156	"	Oakland, Calif.	Comlee City, Wn.	730P	8/8		900A	8/9	7	7	
29	68957	8/1	SP		70014	Pass. Autos	12620	"	Los Angeles, Calif.	Kilansburg, Wn.	235A	8/6		1115A	8/6	5	5	
30	51559	8/2	SP		680330	"	13313	"	Wapinitia, Calif.	"	215A	8/13		1115A	8/13	5	5	
31	51530	8/2	SP		190352	"	13683	"	"	"	1215A	8/7		1100A	8/7	5	5	
32	60148	8/2	SP		69846	"	15800	"	Los Angeles, Calif.	Bremerton, Wn.	405P	8/8		500P	8/8	6	6	Note 6
33	60169	8/3	SP		65097	"	19955	"	"	"	405P	8/8		405P	8/8	5	5	
34	69687	8/15	SP		190032	"	13212	"	Oakland, Calif.	"	1140A	8/20		1140A	8/20	5	5	
35	60639	8/10	SP		65957	"	16150	"	Los Angeles, Calif.	"	1140A	8/20		1140A	8/20	10	10	Note 7
36	60643	8/15	SP		683125	"	13085	"	"	"	1140A	8/20		1140A	8/20	5	5	
37	60579	8/14	SP		65831	"	16085	"	"	"	1140A	8/20		1140A	8/20	6	6	
38	60390	8/9	SP		681932	"	16025	"	"	"	915A	8/13		915A	8/13	4	4	
39	60678	8/10	SP		66125	"	11125	"	"	"	1150A	8/15		1150A	8/15	5	5	
40	60445	8/10	SP		683592	"	12155	"	"	"	1130A	8/15		1130A	8/15	5	5	
41	53210	8/10	SP		681657	"	11207	"	"	Brewett, Wn.	745A	8/16		1100A	8/16	6	6	
42	60285	8/7	SP		190119	"	11820	"	"	"	650A	8/13		1100A	8/13	6	6	
43	60166	8/3	SP		683018	"	16215	"	"	"	745A	8/8		1100A	8/8	5	5	
44	60595	8/9	SP		680992	"	12890	"	"	"	900A	8/14		1200A	8/14	5	5	
45	68522	8/3	SP		65518	Autos Mixed	13128	"	Oakland, Calif.	"	855P	8/7		1100A	8/7	4	4	

See Page 26 for notes.

Reg'd Bill		Car		Commodity	Ship's Name	Port of Origin	Destination	Arrival		Placemen		Days		Days to Placement	Including Delivery	Remarks
Number	Date	Job	Number					Time	Date	Time	Date	Time	Date			
66	69653	8/15	SP	66179	Auto. Ward	13397	SP-SP	Oakland, Calif.	Everett, Wash.	8224	8/20	10004	8/20	5	5	
67	68895	8/8	SP	66207	Pass. Auto.	13790	SP-SP	Oakland, Calif.	Fort Lewis, Wash.	10004	8/13	10004	8/13	5	5	
68	69113	8/10	SP	67775	Auto. Ward	13611	SP-SP	"	Issaquah, Wash.	5502	8/15	5502	8/15	5	5	Note 4
69	68816	8/7	SP	66290	Pass. Auto.	11860	SP-SP	Longbeach, Calif.	Rosemead, Calif.	11957	8/9	11904	8/15	6	6	Note 4
70	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12657	8/13	12657	8/13	5	5	
71	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12657	8/13	12657	8/13	5	5	Note 4
72	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12657	8/13	12657	8/13	5	5	
73	68816	8/7	SP	66290	"	11860	SP-SP	Oakland, Calif.	Seattle, Wash.	12654	8/13	12654	8/13	4	4	
74	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
75	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
76	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
77	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
78	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
79	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
80	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
81	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
82	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
83	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
84	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
85	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
86	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
87	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
88	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
89	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
90	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
91	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
92	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
93	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
94	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
95	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
96	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
97	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
98	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
99	68816	8/7	SP	66290	"	11860	SP-SP	"	"	12654	8/13	12654	8/13	4	4	
100	68816	8/7	SP	66290	"	16770	SP-SP	"	"	12654	8/13	12654	8/13	4	4	



See Page 46 for notes.

and the other 1000 are not.

Line Number	Bill	Date	Ink.	Number	Comments	Weight	Machine	Point of Origin	Destination	Arrival Time	Date	Bald. Com. Carrier Per	Planned	Actual	Days	Receipts to	Planned	Actual	Remarks
199	60329	8/8	SP	64036	Pass. Autos	16060	SP-SP	Los Angeles, Calif.	Spokane, Wash.	1157	8/13			A.M. 8/21	3	6			
200	60442	8/15	SP	190030	"	16575	"	"	"	1054	8/21			A.M. 8/21	3	6			
201	60502	8/3	SP	641081	"	10000	"	Oakland, Calif.	"	2037	8/21			A.M. 8/21	3	6			Rate 8 & 13
202	60760	8/7	SP	642977	"	16180	"	"	"	2254	8/23			A.M. 8/23	3	6			Rate 1
203	60779	8/2	SP	607326	Autos Mixed	16540	"	"	"	1314	8/7			A.M. 8/23	3	6			Rate 14
204	60794	8/2	SP	190660	"	1378	"	"	"	1154	8/7			A.M. 8/23	3	6			
205	53149	8/8	SP	193770	Pass. Autos	16413	"	Los Angeles, Calif.	Spokane, Wash.	1154	8/7			A.M. 8/23	3	6			
206	53187	8/8	SP	641090	"	16575	"	"	"	2037	8/21			A.M. 8/23	3	6			
207	53190	8/8	SP	643370	"	16180	"	"	"	2254	8/23			A.M. 8/23	3	6			
208	53197	8/9	SP	640030	"	1378	"	"	"	1154	8/7			A.M. 8/23	3	6			
209	53205	8/10	SP	193764	"	10000	"	"	"	1157	8/21			A.M. 8/23	3	6			
210	51528	8/2	SP	190165	Autos Mixed	13402	"	Milpitas, Calif.	"	1157	8/3			A.M. 8/23	3	6			
211	51518	8/1	SP	190488	Pass. Autos	13708	"	"	"	1157	8/3			A.M. 8/23	3	6			
212	60246	8/2	SP	642124	"	16575	"	Oakland, Calif.	"	1157	8/3			A.M. 8/23	3	6			Rate 9
213	51538	8/3	SP	64045	"	16180	"	Oakland, Calif.	"	1157	8/3			A.M. 8/23	3	6			
214	60265	8/13	SP	64334	"	13470	"	Oakland, Calif.	"	1157	8/3			A.M. 8/23	3	6			
215	51545	8/14	SP	64390	"	13538	"	Milpitas, Calif.	"	1157	8/3			A.M. 8/23	3	6			
216	51546	8/14	SP	64369	"	13714	"	"	"	1157	8/3			A.M. 8/23	3	6			
217	60263	8/14	SP	60448	"	13470	"	Oakland, Calif.	"	1157	8/3			A.M. 8/23	3	6			
218	60484	8/15	SP	642126	"	13221	"	"	"	1157	8/3			A.M. 8/23	3	6			
219	60774	8/15	SP	64395	"	13445	"	"	"	1157	8/3			A.M. 8/23	3	6			Rate 15
220	60572	8/6	SP	65982	"	13445	"	"	"	1157	8/3			A.M. 8/23	3	6			Rate 16
221	5264	8/6	ATSP	10953	"	10417	ATSP-SP	Los Angeles, Calif.	Walla Walla, Wash.	6454	8/14			A.M. 8/24	3	6			Rate 17
222	5149	8/1	ATSP	10057	"	10140	SP-SP	"	"	5104	8/8			A.M. 8/24	3	6			
223	51540	8/8	SP	65772	"	16115	"	Milpitas, Calif.	Walla Walla, Wash.	10509	8/13			A.M. 8/24	3	6			
224	51538	8/8	SP	19368	Autos Mixed	16608	"	"	"	10509	8/13			A.M. 8/24	3	6			
225	60754	8/7	SP	190375	Pvt. Autos	13938	"	Oakland, Calif.	"	10509	8/13			A.M. 8/24	3	6			
226	51544	8/8	ATC	64347	Pass. Autos	10507	"	Milpitas, Calif.	"	10509	8/13			A.M. 8/24	3	6			
227	53157	8/3	SP	64061	"	11954	"	Los Angeles, Calif.	"	10509	8/13			A.M. 8/24	3	6			
228	51536	8/3	SP	643351	Autos Mixed	13243	"	Milpitas, Calif.	"	10509	8/13			A.M. 8/24	3	6			
229	60973	8/2	SP	65064	Pass. Autos	16113	"	"	"	10509	8/13			A.M. 8/24	3	6			
230	64401	8/2	SP	640187	Autos Mixed	16423	"	Oakland, Calif.	"	10509	8/13			A.M. 8/24	3	6			
231	60043	8/1	SP	64170	Pass. Autos	17025	"	Los Angeles, Calif.	"	10509	8/13			A.M. 8/24	3	6			
232	60541	8/13	SP	190175	"	14502	"	"	"	10509	8/13			A.M. 8/24	3	6			
233	60040	8/1	SP	65151	"	15495	"	"	"	10509	8/13			A.M. 8/24	3	6			
234	60682	8/6	SP	190164	Autos Mixed	15886	"	Oakland, Calif.	Walla Walla, Wash.	10509	8/13			A.M. 8/24	3	6			
235	51537	8/6	SP	643108	Pvt. Autos	10000	"	Milpitas, Calif.	Walla Walla, Wash.	10509	8/13			A.M. 8/24	3	6			
236	60106	8/4	SP	190217	Pass. Autos	13670	"	Los Angeles, Calif.	Walla Walla, Wash.	10509	8/13			A.M. 8/24	3	6			
237	60239	8/14	SP	192093	Autos Mixed	11311	"	Oakland, Calif.	Walla Walla, Wash.	10509	8/13			A.M. 8/24	3	6			
238	60115	8/10	SP	643314	"	16905	"	"	"	10509	8/13			A.M. 8/24	3	6			
239	64004	8/3	SP	64372	"	13614	"	"	"	10509	8/13			A.M. 8/24	3	6			
240	64272	8/1	SP	65777	Pass. Autos	13973	"	"	"	10509	8/13			A.M. 8/24	3	6			

- Note #1 Delayed Ambara, Washington August 12th to August 13th account congestion in yard.  
Note #2 Not spotted August 13th account Sunday.  
Note #3 Not spotted August 13th on arrival account car on spot, also run around and August 13th was Sunday.  
Note #4 Not spotted on arrival account car on spot.  
Note #5 Not received from SP until August 14th.  
Note #6 Not received from SP until August 6th.  
Note #7 Not received from SP until August 16th.  
Note #8 Not spotted August 12th account Sunday.  
Note #9 Not spotted August 5th account Sunday.  
Note #10 Not received from SP until August 12th.  
Note #11 Delivered to UP at Seattle for unloading.  
Note #12 Delayed account moved to Terry Avenue, Washington in error.  
Note #13 Delayed account car part unloaded at Seattle, Washington.  
Note #14 Placed on constructive placement August 9th.  
Note #15 Not received from SP until August 20th.  
Note #16 Not received from SP until August 11th.  
Note #17 Not received from SP until August 17th.  
Note #18 Not spotted August 13th account congestion in yard, etc.



PROTESTANT'S EXHIBIT 77  
NORTHERN PACIFIC RAILWAY COMPANY


Carloads of Automobiles  
 I.C.C. Commodity Classes 613 and 615) from origins  
 in California to Destinations  
 on the Northern Pacific Railway in the States of  
 Idaho, Montana, Oregon and Washington  
 for the Year 1955.

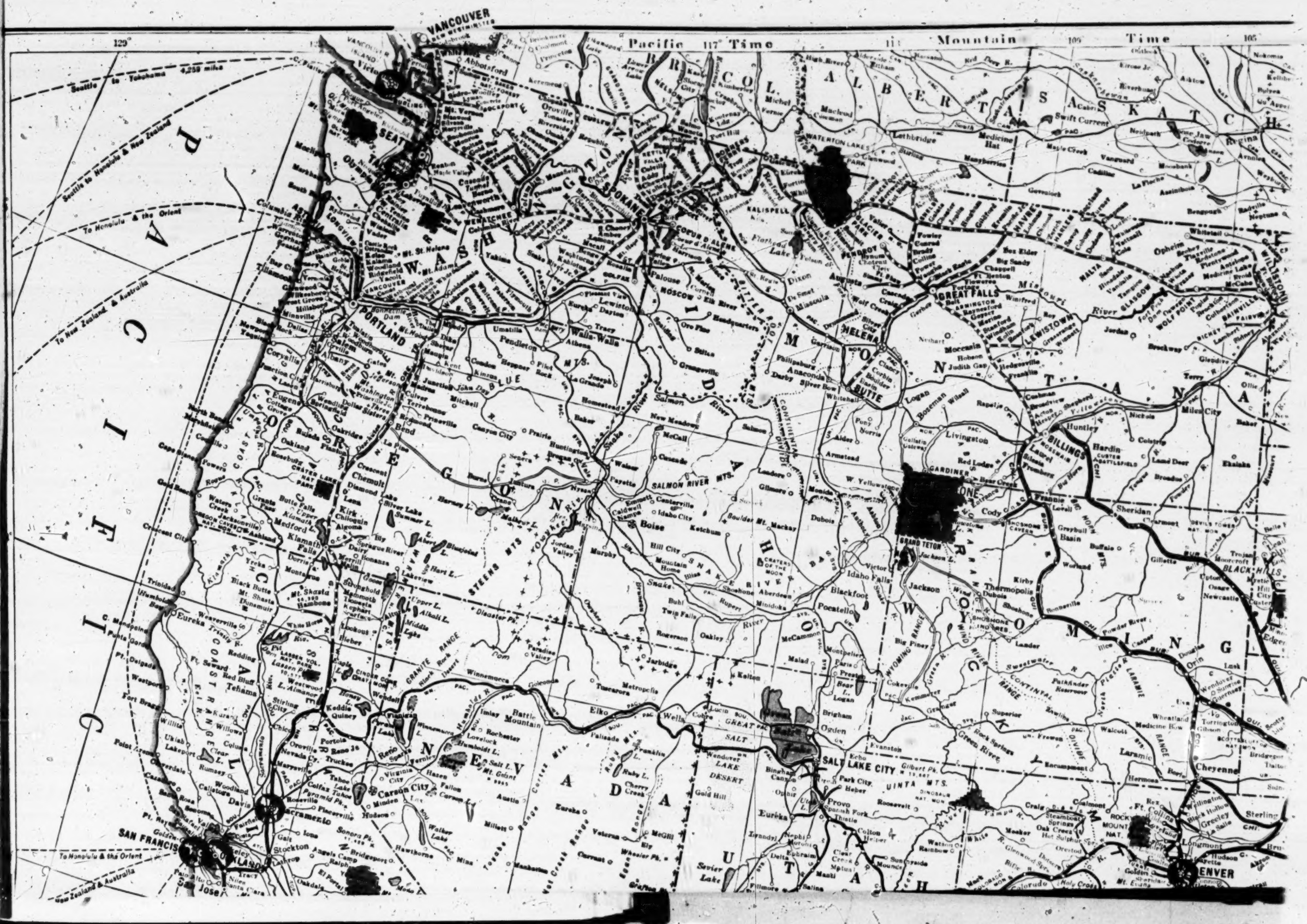
<u>Destination State</u>	<u>Number of Carloads</u>	<u>Number of Tons</u>	<u>Nor.Pac. Revenue</u>
Idaho	217	1 534	\$ 27 118
Montana	232	1 641	87 822
Oregon	31	203	2 879
Washington	<u>7 628</u>	<u>52 285</u>	<u>615 746</u>
Total	8 108	55 663	\$ 733 565

772

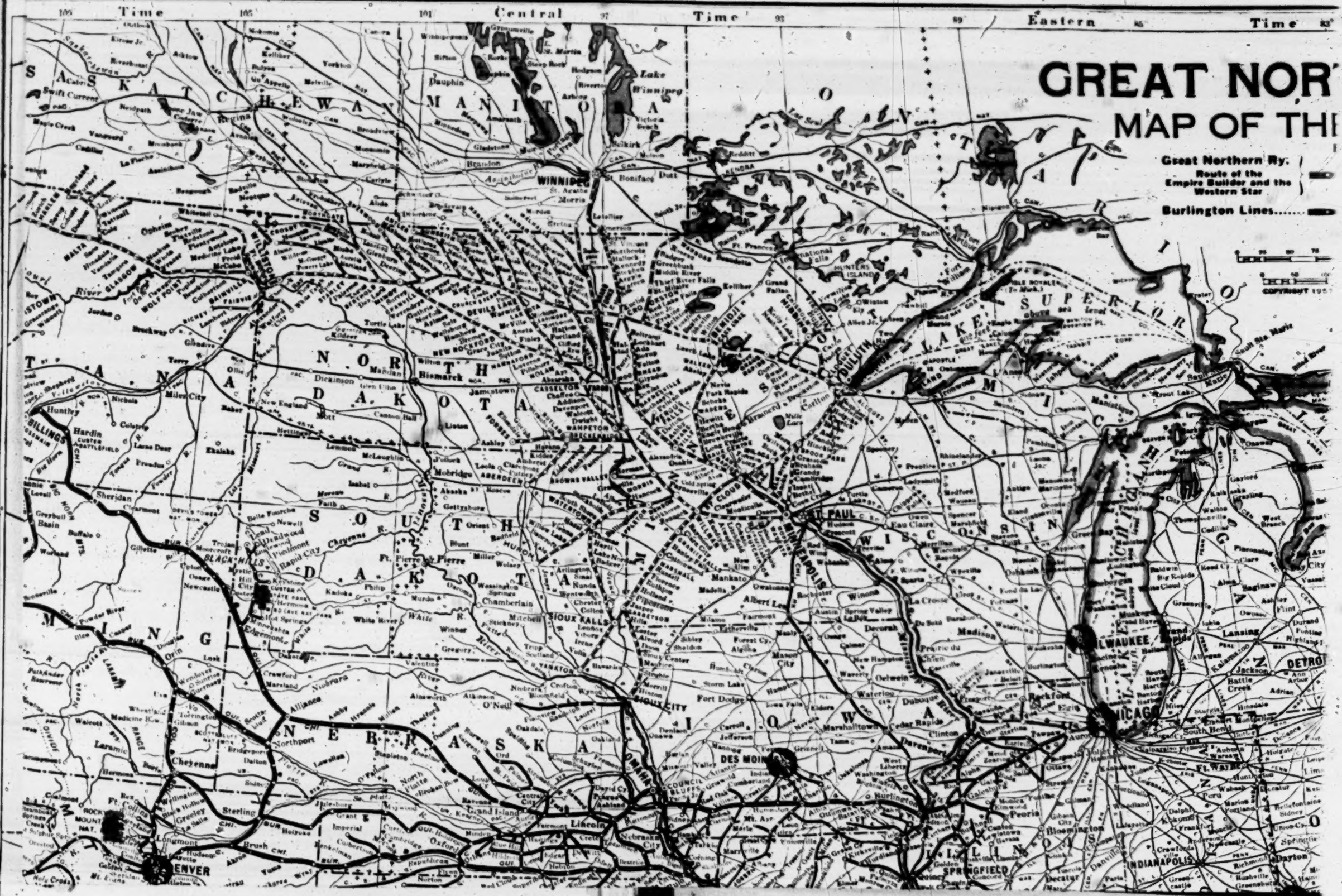


PROTESTANT'S EXHIBIT 84

(See Opposite) 







# GREAT NOR MAP OF THE

Great Northern Ry.  
Route of the  
Empire Builder and the  
Western Star  
Burlington Lines.....

0 10 20 30  
MILES  
COPYRIGHT 1927



Time 109 110 111 112 113 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

# GREAT NORTHERN RAILWAY

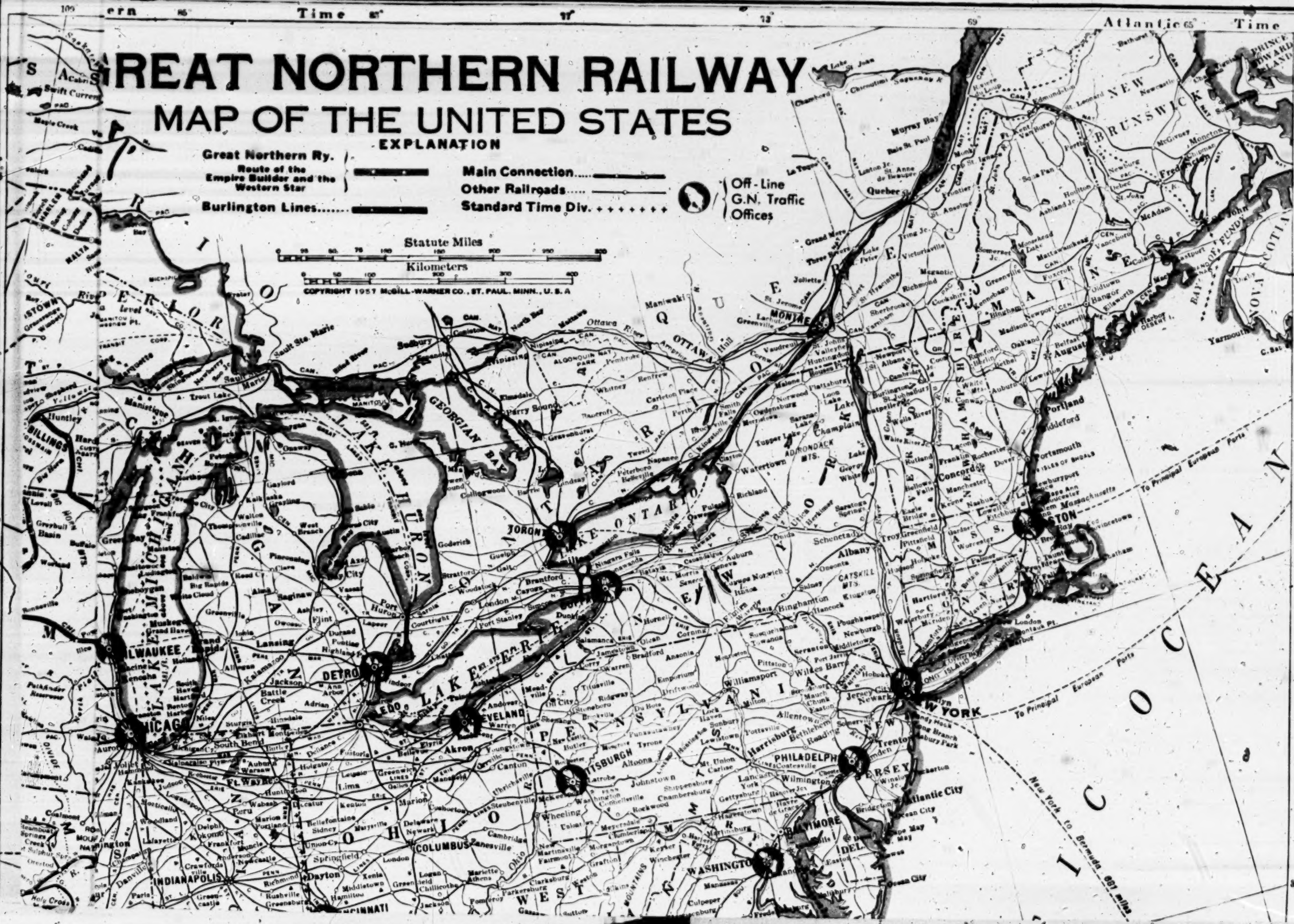
## MAP OF THE UNITED STATES

EXPLANATION

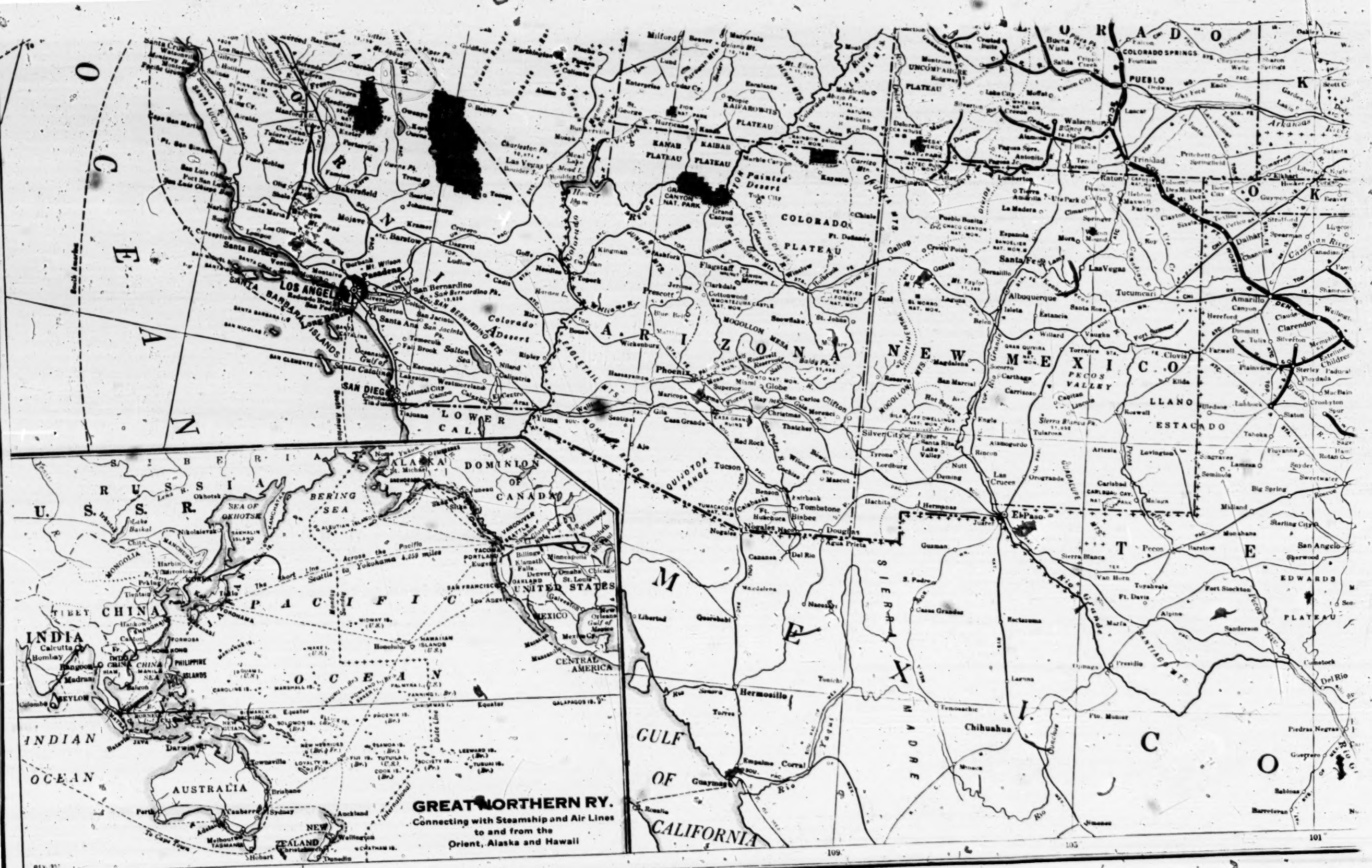
Great Northern Ry.  
Route of the  
Empire Builder and the  
Western Star

Main Connection.....  
Other Railroads.....  
Standard Time Div. + + + + +

Off-Line  
G.N. Traffic  
Offices

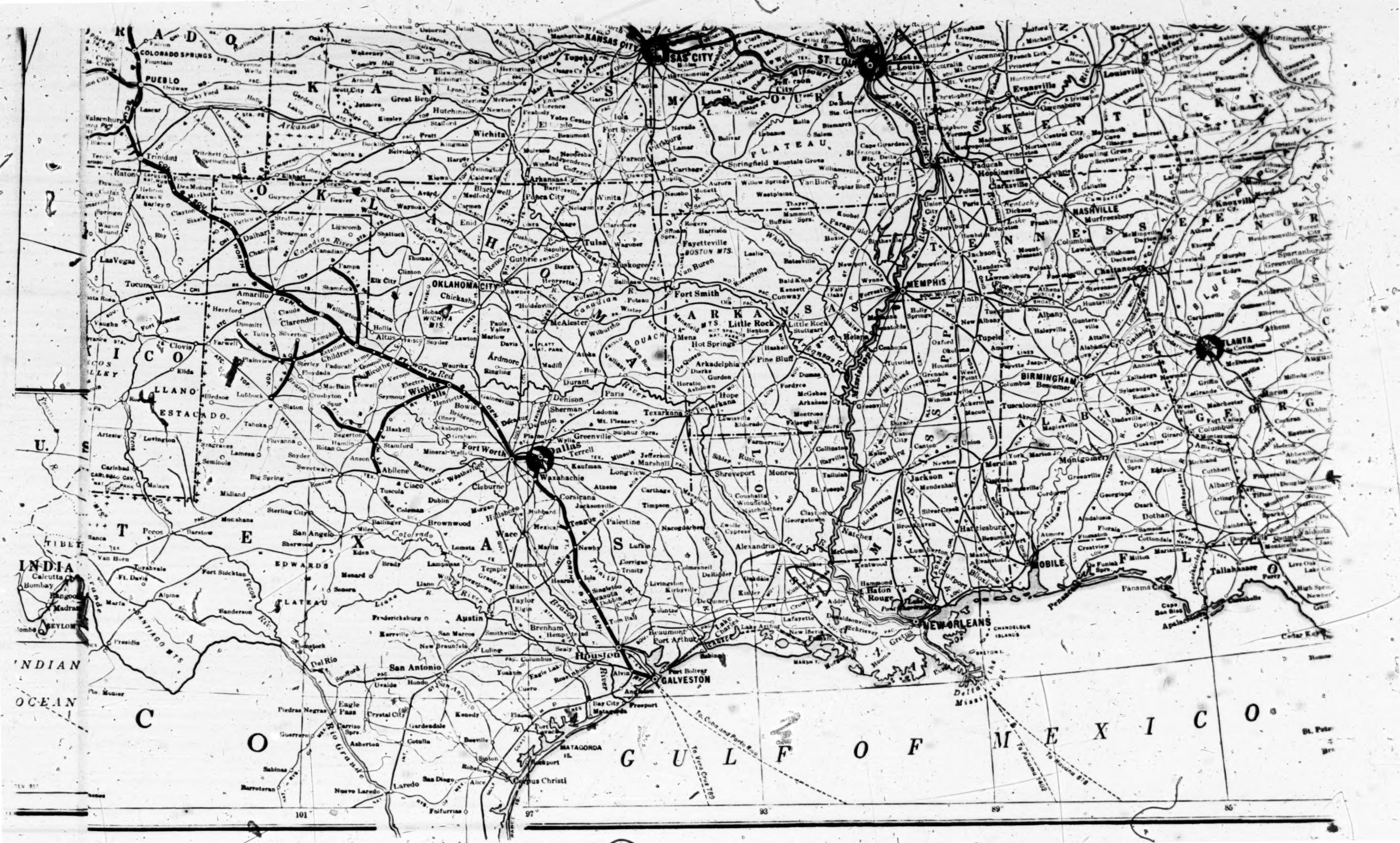




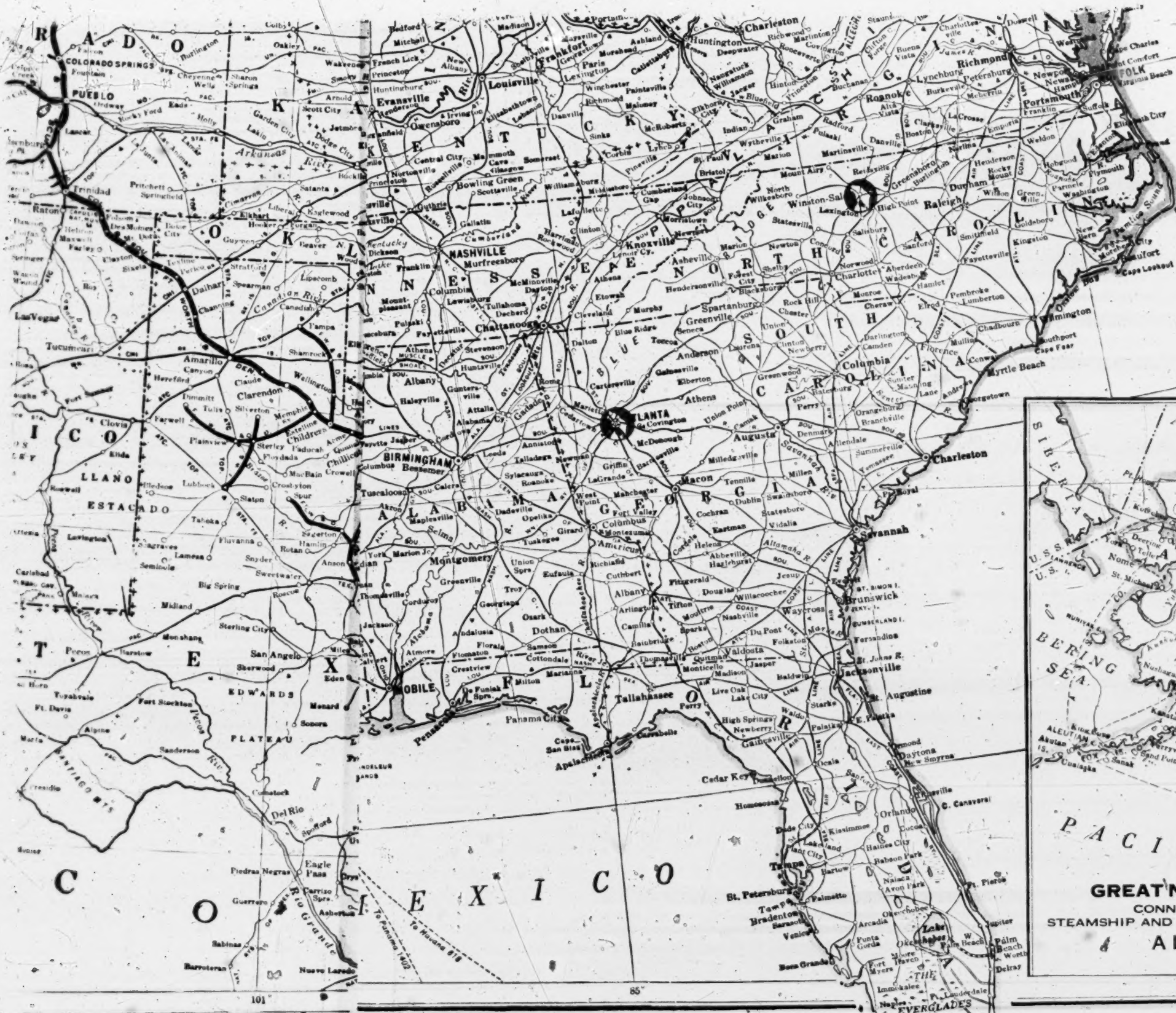


**GREAT NORTHERN RY.**  
Connecting with Steamship and Air Lines  
to and from the  
Orient, Alaska and Hawaii









The Incomparable  
**EMPIRE BUILDER**  
Streamlined  
**WESTERN STAR**



[fol. 774]

Before the

**INTERSTATE COMMERCE COMMISSION**

. . . .

**DOCKET NO. MC 78787 SUB 37  
PACIFIC MOTOR TRUCKING CO.****DOCKET NO. MC 42537 SUB 18  
CARRENS TRANSPORT CO.****DOCKET NO. MC 107227 SUB 43  
INSURED TRANSPORTERS, INC.**

. . . .

**GREAT NORTHERN RAILWAY COMPANY**

774

Saint Paul, Minnesota

February 10, 1937

67-2-2

Description (a)	Schedule Number (b)
Railway Operating Revenues and Expenses, Railway Tax Accruals, Net Railway Operating Income, Average Net Investment, and Rate of Return	A
Wage Statistics	B
Average Unit Prices of Railway Material and Supplies Used in Transportation Service	C
Expenditures Made to Improve the Property and Expedite the Movement of Traffic During the Period from January 1, 1951 to December 31, 1955	D
Locomotives Available for Freight Service	E
Stored Serviceable Motive Power	F
Agency and Non-Agency Stations Operated by Great Northern Railway Co.	G
Motor-Vehicle and Total Intercity Ton-Miles, and Distribution of Intercity Ton-Miles by Transport Agency, 1939-1953	H
Comparison of New Car Registrations With Rail Cars of Commodities 613, Automobiles-Passenger, and 615, Automobiles-Freight, Terminated in the States of Idaho, Montana, Nevada, Oregon, Utah and Washington	I
Loss and Damage Claims Paid Compared With Gross Freight Revenue from Commodities 613, Automobiles-Passenger, and 615, Automobiles-Freight	J
Average Revenue Per Ton on Automobile Traffic (Freight and Passenger) Originating in California Compared With Average Revenue Per Ton for Indicated Commodity Groups	K
Cars, Tons and G.N. Revenue of Passenger and Freight Automobiles Originated in California and Terminated in the Indicated States	L
Carloads of Freight and Passenger Automobiles Originated in California and Terminated at Stations on the Great Northern Railway in the States of Idaho, Montana, Oregon and Washington	M



[fol. 776]

**Cars, Tons and G.N. Revenue of Passenger and  
Freight Automobiles Originated in California  
and Terminated in the Indicated States**

**Year 1955**

<b>Destination State (a)</b>	<b>Cars (b)</b>	<b>Tons (c)</b>	<b>G.N. Revenue (d)</b>
<b>Passenger Automobiles</b>			
<b>Terminated on Great Northern</b>			
1. Washington	7,326	50,052	\$ 925,532
2. Oregon	1,270	8,615	164,020
3. Idaho	46	303	7,934
4. Montana	244	1,722	87,311
<b>Great Northern as Intermediate Carrier</b>			
5. Washington	396	2,643	\$ 29,263
6. Oregon	507	3,314	50,349
7. Idaho	2	13	233
8. Montana	6	41	1,929
9. Total Passenger Automobiles	9,797	66,703	\$1,267,126
<b>Freight Automobiles</b>			
<b>Terminated on Great Northern</b>			
10. Washington	100	654	\$ 10,451
11. Oregon	12	73	372
12. Idaho	7	45	1,007
13. Montana	0	52	3,111
<b>Great Northern as Intermediate Carrier</b>			
14. Washington	53	344	\$ 3,455
15. Oregon	11	74	905
16. Idaho	-	-	-
17. Montana	1	6	221
18. Total Freight Automobiles	192	1,243	\$ 22,132
19. Total Passenger & Freight Automobiles	9,989	67,951	\$1,289,258

Source: Company Records.

776



PROTESTANT'S EXHIBIT 93  
BEFORE THE INTERSTATE COMMERCE COMMISSION

OPERATING AUTHORITY

OF

TRANSPORT STORAGE AND DISTRIBUTING CO.,  
SEATTLE, WASHINGTON

NO. MC 108121

NEW AND USED AUTOMOBILES AND TRUCKS, IN DRIVEWAY SERVICE, OVER  
IRREGULAR ROUTES,

BETWEEN SEATTLE, WASH., AND POINTS AND PLACES IN  
WASHINGTON WEST OF THE SUMMIT OF THE CASCADE  
MOUNTAINS, AND PORTLAND, OREG.

AUTOMOBILES AND TRUCKS, NEW OR USED, IN SECONDARY MOVEMENTS,  
BY THE TRUCKWAY METHOD, OVER IRREGULAR ROUTES,

BETWEEN SEATTLE, WASH., ON THE ONE HAND, AND, ON THE  
OTHER PORTLAND, OREGON AND POINTS AND PLACES IN  
WASHINGTON.

777

[fol. 778]

PROTESTANT'S EXHIBIT 98

669

C-15.1

**CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY**

NO. MC 109772

**ROBERTSON TRUCK-A-WAYS, INC.,  
LOS ANGELES, CALIFORNIA**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 11th day of May, A. D. 1948.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

**IRREGULAR ROUTES, Truck-a-way method:**

*New automobiles, in initial movements,*

From Long Beach, Calif., to points and places in Arizona, New Mexico, Nevada, Oregon, and Utah,

*New automobiles and new trucks*, in initial movements,  
From Maywood, Calif., and points and places within  
1 mile thereof, to points and places in Arizona,  
Nevada, and Oregon.

*New automobiles*, in secondary movements,  
From points and places in California, on San Fran-  
cisco Bay, to points and places in California, except  
Long Beach, San Pedro, and Wilmington.

*New automobiles and new trucks*, in secondary move-  
ments,  
From Phoenix, Ariz., to Los Angeles, Calif.

Return with no transportation for compensation except  
as otherwise authorized.

**AND IT IS FURTHER ORDERED**, and is made a con-  
dition of this certificate that the holder thereof shall render  
reasonable continuous and adequate service to the public  
in pursuance of the authority herein granted, and that  
failure so to do shall constitute sufficient grounds for sus-  
pension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL,  
Secretary.

(SEAL)

Sheet 2

[fol 779] These rights were originally applied for by  
Leigh C. Robertson and Roderick C. Robertson, a partner-  
ship, doing business as Robertson's Truck-a-way in Docket  
No. MC 59815 Sub 1. By MC-FC 27269-A approved Feb-  
ruary 23, 1948, the above-named carrier was substituted  
as applicant, and the same number was assigned. Since  
said carrier now holds permits in MC 59815, Docket No.  
MC 109772 has been assigned to cover the common carrier  
rights granted herein.

[fol. 780]

571

C-15.1

**CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY**

**NO. MC-109772 SUB 3\***

**ROBERTSON TRUCK-A-WAYS, INC.,  
LOS ANGELES, CALIFORNIA**

At a Session of the **INTERSTATE COMMERCE COM-  
MISSION**, Division 5, held at its office in Washington,  
D. C., on the 27th day of November, A. D., 1950.

**AFTER DUE INVESTIGATION**, it appearing that the  
above-named carrier has complied with all applicable pro-  
visions of the Interstate Commerce Act, and the require-  
ments, rules, and regulations prescribed thereunder, and  
therefore, is entitled to receive authority from this Com-  
mission to engage in transportation in interstate or foreign  
commerce as a motor carrier; and the Commission so find-  
ing:

**IT IS ORDERED**, that the said carrier be, and it is  
hereby, granted this Certificate of Public Convenience and  
Necessity as evidence of the authority of the holder to  
engage in transportation in interstate or foreign commerce  
as a common carrier by motor vehicle; subject, however, to  
such terms, conditions, and limitations as are now, or may  
hereafter be, attached to the exercise of the privileges herein  
granted to the said carrier.

**IT IS FURTHER ORDERED**, that the transportation  
service to be performed by the said carrier in interstate or  
foreign commerce shall be as specified below:

**IRREGULAR ROUTES:**

*New automobiles; new trucks, and new chassis, in initial  
movements, in truckaway service,*

*From San Leandro, Calif., and all points and places  
within one mile of San Leandro, except points and*

places in Oakland, Calif., to points and places in California, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

*New trucks and new chassis*, in initial movements, in driveway service,

From the above-specified origin points and places to the destination points and places described immediately above.

*New trucks*, in secondary movements, in driveway and truckaway service,

From San Leandro, Calif., and points and places within 20 miles thereof, to points and places in the States named above.

*New automobiles, new trucks, and new chassis*, in secondary movements, in truckaway service,

From Salt Lake City, Utah, to San Leandro, Calif., and points and places within 20 miles thereof.

Return with no transportation for compensation except as otherwise authorized.

The authority granted herein, to the extent it duplicates any authority now held by, or previously granted to said carrier is not to be construed as conferring more than one operating right.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonable continuous and adequate service to the public pursuant to the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the commission, division 5.

W. L. BARTEL,  
Secretary.

(SEAL)



[fol. 781]

• These operations were applied for by Leigh C. Robertson and Roderick C. Robertson, a partnership, doing business as Robertson's Truck-Away under MC 109511; however, the above-named carrier was substituted as applicant by the order of the commission, dated June 28, 1949, in MC 109511, and MC 109772 Sub 3 was assigned.

[fol. 782]

C-15.1

**CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY**

**NO. MC 109772 Sub. 4**

**ROBERTSON TRUCK-A-WAYS, INC.,  
LOS ANGELES, CALIFORNIA**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D.C., on the 1st day of July, A.D. 1953.

**AFTER DUE INVESTIGATION**, it appearing that the above-named carrier has complied with all applicable provisions of the interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefor, is intitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

**IT IS ORDERED**, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

**IRREGULAR ROUTES:**

*Automobiles*, in initial movements, in truckaway service,

From the site of the plant of the Chrysler Corporation located adjacent to Maywood, Calif., to points in the Los Angeles Harbor Commercial Zone, as defined by the Commission, and points in Idaho and Washington, with no transportation for compensation on return except as otherwise authorized.

*Automobiles*, in secondary movements, in truckaway service,

From points in the Los Angeles Harbor Commercial Zone, as defined by the Commission, to points in Los Angeles County, Calif., with no transportation for compensation on return except as otherwise authorized.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5

GEORGE W. LAIRD,  
Acting Secretary.

(SEAL)

[fol. 784]

C-15.1

**CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY**

NO. MC 109772 SUB 5

**ROBERTSON TRUCK-A-WAYS, INC.,  
LOS ANGELES, CALIFORNIA**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 28th day of February, A. D., 1952.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

*New automobiles, in secondary movements, by the truck-away method, over irregular routes,*

From Phoenix, Ariz., to points in Fresno, Kings, Tulare, and Inyo Counties, Calif.; and points in California south of a line extending along the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, Calif., except Los Angeles, Calif., with

no transportation for compensation on return except as otherwise authorized.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonable continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL,  
Secretary.

(SEAL)

[fol. 785]

## PROTESTANT'S EXHIBIT 99

## ROBERTSON TRUCK-A-WAYS, INC.

7101 East Slauson Avenue  
Los Angeles 22, California

## TRAILERS

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Serial Number</i>
6	Custombilt	127
8	Custombilt	129
9	Custombilt	130
29	Custombilt	303
34	Custombilt	TDR-273602
35	Custombilt	TDR-273600
36	Custombilt	TDR-273888
47	Custombilt	TDR-263379
38	Custombilt	TDR-329897
39	Custombilt	125
40	Custombilt	126
41	Custombilt	128
42	Custombilt	132
43	Custombilt	124
44	Durobilt	787
45	Durobilt	805
46	Durobilt	898
50	Durobilt	905
52	Durobilt	907
53	Durobilt	912
54	Durobilt	927
55	Durobilt	929
56	Durobilt	934
57	Durobilt	935
60	Traffic	11-3-48
61	Traffic	11-2-48
62	Durobilt	936
63	Durobilt	937
64	M. H. S.	49-B-40
66	Durobilt	939



## TRAILERS (cont.)

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Serial Number</i>
67	Traffic	8-1-49
68	Traffic	8-2-49
69	Traffic	8-3-49
70	Traffic	8-4-49
71	Durobilt	951
-1-		
[fol. 786]		
72	Durobilt	952
73	Durobilt	953
74	Durobilt	955
75	Durobilt	959
76	Durobilt	960
77	Durobilt	961
78	Durobilt	964
79	Durobilt	967
80	Durobilt	968
81	Durobilt	969
82	Durobilt	970
83	Durobilt	971
84	Durobilt	979
85	Durobilt	985
86	Durobilt	987
87	Durobilt	992
88	Durobilt	1027
89	Durobilt	1034
90	Durobilt	1035
91	Durobilt	1036
92	Durobilt	1076
93	Durobilt	1078
94	Durobilt	1077
95	Lande	LA-202
96	Lande	LA-203
97	Lande	LA-204
98	Lande	LA-205

## TRAILERS (cont.)

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Serial Number</i>
99	Durobilt	1104
100	Durobilt	1118
101	Durobilt	1119
102	Durobilt	1120
103	Durobilt	1124
104	Durobilt	1122
105	Durobilt	1123
106	Durobilt	1131

—2—

[fol. 787]

107	Durobilt	1132
108	Durobilt	1133
109	Durobilt	1134
110	Durobilt	1135
111	Durobilt	1136
112	Durobilt	1137
113	Durobilt	1138
114	Durobilt	1139
115	Durobilt	1140
116	Durobilt	1141
117	Durobilt	1142
118	Durobilt	1157
119	Durobilt	1158
120	Durobilt	1159
121	Durobilt	1160
122	Durobilt	1161
123	Durobilt	1162
124	Durobilt	1163
125	Durobilt	1164
126	Durobilt	1165
127	Durobilt	1166
128	Durobilt	1167
129	Durobilt	1168
130	Durobilt	1174
138	Durobilt	1186

## TRAILERS (cont.)

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Serial Number</i>
139	Durobilt	1000
140	Durobilt	1001
141	Durobilt	1231
142	Durobilt	1232
143	Durobilt	DU 1233
144	Durobilt	1236
145	Durobilt	1237
146	Durobilt	1239
147	Durobilt	1238
148	Durobilt	1252

—3—

[fol: 788]

149	Durobilt	DU 1278
150	Durobilt	DU 1279
205	Durobilt	DU 1002
513	Traffic	11-22-49
514	Traffic	12-4-49
515	Traffic	12-5-49
516	Traffic	12-15-49
512	Traffic	11-10-49
511	Traffic	10-11-49
517	Traffic	10-4-50

—4—

[fol. 789]

## ROBERTSON TRUCK-A-WAYS, INC.

7101 East Slauson Avenue  
Los Angeles 22, California

## TRUCKS

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Engine or Serial No.</i>
36	Dodge	8422512
39	Dodge	T1509171
40	Dodge	T1509166
41	Dodge	T1509469
42	Dodge	82544333
43	Dodge	82544119
44	Dodge	85601697
45	Dodge	85601655
47	Dodge	T15019335
48	Dodge	85601640
49	Dodge	85601583
50	Dodge	85601327
51	Dodge	85601859
52	Dodge	T14863267
53	Dodge	85601871
54	Dodge	T15026105
55	Dodge	86508789
56	Dodge	85601880
57	Dodge	85601881
59	Dodge	88680018
60	Dodge	82803374
61	Dodge	82803375
63	Dodge	82803377
64	Dodge	82803392
65	Dodge	82803393
66	Dodge	82803434
67	Dodge	82803435
68	Dodge	82803439
69	Dodge	82803440
70	Dodge	86600201

## TRUCKS (cont.)

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Engine or Serial No.</i>
71	Dodge	86600202
72	Dodge	86600203
73	Dodge	86600204
74	Dodge	86600205
75	Dodge	86600206
-1-		
[fol. 790]		
76	Dodge	86600207
77	Dodge	80081956
78	Dodge	80081957
80	Dodge	80084771
81	Dodge	80084772
83	Dodge	82824151
84	Dodge	82824260
85	Dodge	81797551
86	Dodge	81797552
87	Dodge	81797566
88	Dodge	81797567
89	Dodge	81797565
90	Dodge	81797568
91	Dodge	81796335
92	Dodge	81797918
93	Dodge	81800104
94	Dodge	81800222
95	Dodge	81800228
96	Dodge	81800229
97	Dodge	81800216
98	Dodge	81800221
99	Dodge	8304908
100	Dodge	84600890
101	Dodge	85201030
102	Dodge	84601172
103	Dodge	84600976
104	Dodge	84601008
105	Dodge	8305810



## TRUCKS (cont:)

Unit No.	Make of Vehicle	Engine or Serial No.
106	Dodge	8305871
107	Dodge	8305802
108	Dodge	8306013
109	Dodge	8306015
110	Dodge	8306014
111	Dodge	8306037
112	Dodge	8306016
113	Dodge	8306027
114	Dodge	8306033
115	Dodge	8306316
116	Dodge	8306323
117	Dodge	8306324
-2-		
[fol. 791]		
118	Dodge	8306327
203	Dodge	8303214
204	Dodge	8302834
205	Dodge	81793475
207	Dodge	81793682
208	Dodge	81793721
209	Dodge	8303277
211	Dodge	8303019
212	Dodge	85000435
213	Dodge	8303023
215	Dodge	81795472
223	Dodge	85000425
225	Dodge	8302925
226	Dodge	85025713
227	Dodge	85000614
230	Dodge	8301903
235	Dodge	8303324
238	Dodge	8304501
239	Dodge	8304530
244	Dodge	8303251

## TRUCKS (cont.)

<i>Unit No.</i>	<i>Make of Vehicle</i>	<i>Engine or Serial No.</i>
245	Dodge	8303717
246	Dodge	8304792
247	Dodge	8304803
250	Dodge	8305797
251	White	396817
253	Dodge	8303219
254	Dodge	8306345
255	Dodge	8306344
256	Dodge	8306378
257	Dodge	81825505
258	Dodge	81825509
259	Dodge	81825179
711	White	370829
713	Dodge	81793274
714	Dodge	81793318
715	Dodge	81793264
716	Dodge	81793319
719	White	385138
720	White	385134

PROTESTANT'S EXHIBIT 100

136  
RAND McNALLY

LOOSE LEAF OUTLINE MAP

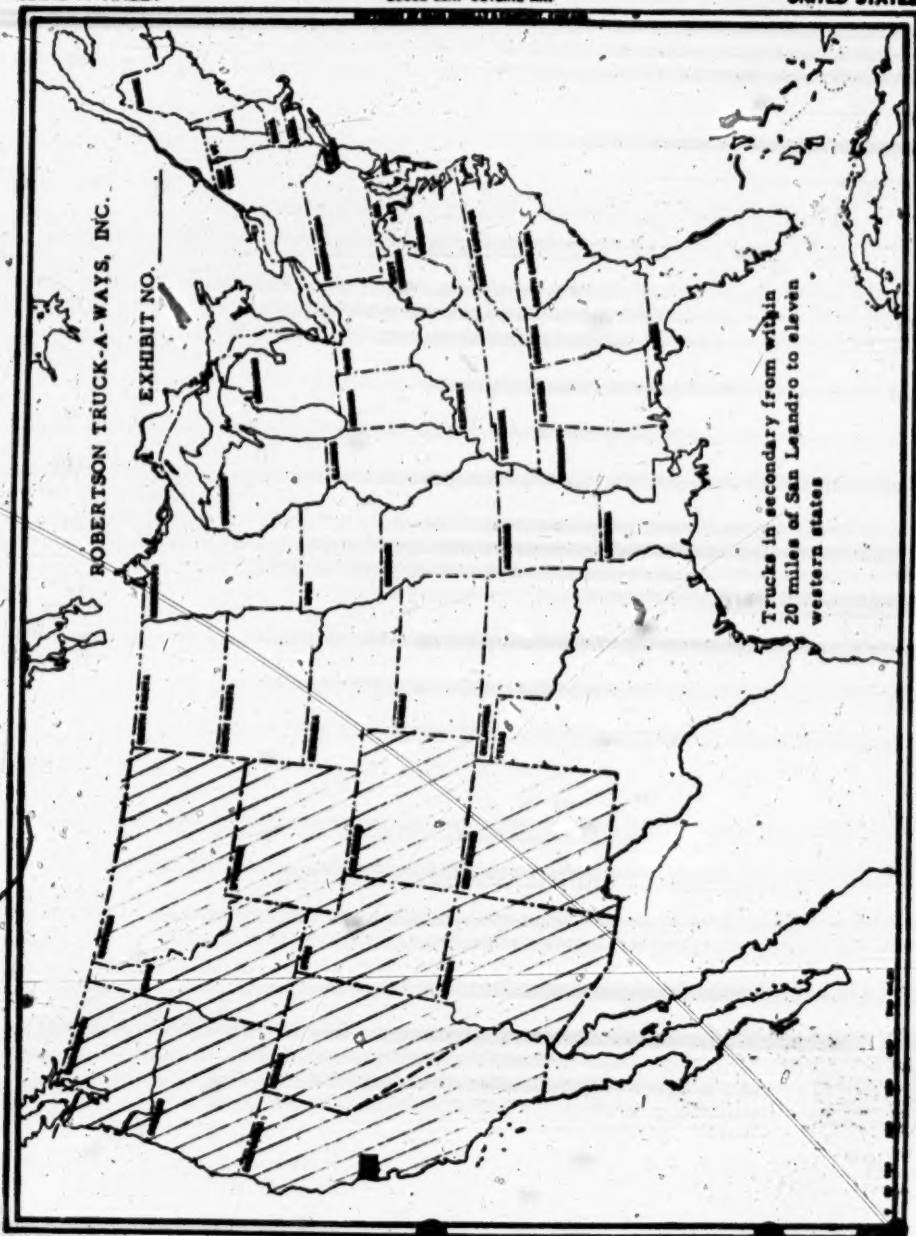
UNITED STATES



## PROTESTANT'S EXHIBIT 101

UNITED STATES

RAND McNALLY



PROTESTANT'S EXHIBIT 102  
 ROBERTSON TRUCK-A-WAYS, INC.  
 7101 E. Simson Avenue  
 Los Angeles 22, California

Balance Sheet as of December 31, 1966

ASSETS

Current Assets

Cash on Deposit		\$ 140,713.44
Accounts Receivable		119,930.53
Material & Supplies		<u>17,294.76</u>
Total Current Assets		377,938.71

Prepayments

1,594.36

Land and Land Rights

161,000.00

Depreciable Property:  
Structures & Improvements  
Trucks, Trailers & Other  
Equipment

89,500.99

891,503.29

541,004.38

722,004.33

362,449.79

359,554.59

Less Allowance for depreciation

Intangible Property

43,922.86

TOTAL ASSETS

982,808.39

LIABILITIES

Current Liabilities

Accounts Payable	120,903.55
Taxes Accrued	<u>6,657.76</u>

Total Current Liabilities

126,561.31

Provisions for Income Tax - Estimated  
Other Reserves  
Common Capital Stock  
SURPLUS

11,502.95

4,304.77

200,000.00

420,362.07

982,808.39



## PROTESTANT'S EXHIBIT 103

## ROBERTSON TRUCK-A-WAYS, INC.

## INITIAL TRAFFIC FROM LOS ANGELES TO ARIZONA, NEVADA AND OREGON

<u>1956</u>	<u>Arizona</u>	<u>Nevada</u>	<u>Oregon</u>
January	285	60	222
February	317	58	216
March	234	64	246
April	145	33	100
May	157	47	
June	156	39	
July	177	31	
August	182	59	
September	38	8	
October	111	31	
November	176	49	
December	232	67	
<u>1957</u>			
January	311	82	542
February	179	38	147
Totals	2700	646	1473

725

SH

No

5

## PROTESTANT'S EXHIBIT 104

## ROBERTSON TRUCK-A-WAYS, INC.

## SHIPMENTS FROM VAN NUYS PLANT - VAN NUYS, CALIFORNIA

<u>No. Units</u>	<u>Date</u>	<u>Destination</u>
4	7-25-55	North Island, San Diego, Calif.
1	7-25-55	Boulder City, Nevada
1	1-5-56	Florence, Arizona
1	2-2-56	Holbrook, Arizona
1	2-7-56	Boulder City, Nevada
1	2-7-56	Sacaton, Arizona
1	2-13-56	Coolidge, Arizona
1	2-21-56	Flagstaff, Arizona
1	2-24-56	Phoenix, Arizona
1	2-24-56	Phoenix, Arizona
1	2-27-56	Parker, Arizona
1	2-28-56	Parker, Arizona
1	2-28-56	Tucson, Arizona
1	3-5-56	White River, Arizona
1	3-5-56	Tucson, Arizona
1	3-5-56	Tucson, Arizona
1	3-8-56	White River, Arizona
1	3-16-56	Phoenix, Arizona
1	3-18-56	Nogales, Arizona
1	5-9-56	Phoenix, Arizona
2	6-26-56	Boulder City, Nevada
1	7-5-56	Boulder City, Nevada
1	7-24-56	White River, Arizona
1	7-24-56	Sells, Arizona
1	7-26-56	Sacaton, Arizona
1	8-3-56	Las Vegas, Nevada
1	8-16-56	Boulder City, Nevada
5	9-8-56	Port Hueneme, California

[fol. 797]

EXHIBIT NO.

**ROBERTSON TRUCK-A-WAYS, INC.**

## SHIPMENTS FROM VAN NUYS PLANT - VAN NUYS, CALIFORNIA

No. Units	Date	Destination
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-8-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
5	9-18-56	Port Hueneme, California
4	9-20-56	Port Hueneme, California
1	9-28-56	Los Alamitos, California
6	12-28-56	Phoenix, Arizona
1	1-3-57	Phoenix, Arizona
1	1-8-57	Camp Mercury, Nevada

[fol. 798]

## PROTESTANT'S EXHIBIT 105

## Interstate Commerce Commission

BUREAU OF MOTOR CARRIERS—LOS ANGELES OFFICE

LOS ANGELES, CALIFORNIA

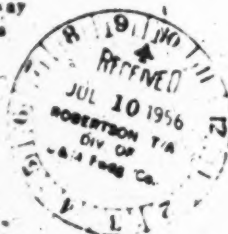
RM 133 1000 S. May

JUL 10 1956

July 3, 1956

Refer: C

MC-109772



Robertson Truck-A-Ways, Inc.  
7101 E. Slauson Avenue  
Los Angeles 58, Calif.

Attention: Mr. David Lee, Terminal Manager

Gentlemen:

This letter, at your request, is for the purpose of confirming conversations which I had today with you and in which your Mr. Ferguson participated, respecting the interstate operating authority of Robertson Truck-A-Ways, Inc., to serve the General Motors plant located on Tweedy Boulevard near Southgate, California.

Robertson has a certificate of convenience and necessity in MC-109772, which among other things authorizes the transportation of new automobiles and new trucks in initial movements, from Maywood, Calif., and points and places within one mile thereof to points and places in Arizona, Nevada, and Oregon. Question has been raised as to whether or not the wording in the portion of your certificate quoted authorizes transportation from the Commercial Zone of Maywood, an incorporated city having a population of 13,292, according to the 1950 decennial census. Ex Parte No. MC-37 and 4th M.C.C. 441, together with the determination of Division 2 in the Cornetta Case, 4th M.C.C. 644, clearly indicate that that portion of the certificate quoted authorizes service at Maywood, including all points within its commercial zone, and in addition the certificate authorizes a separate territorial grant of authority to serve a radial territory smaller than the commercial zone, thus the certificate authorizes service from the commercial zone of Maywood, which includes all territory within the city limits of Maywood plus an additional three miles extending beyond the corporate limits, plus all of any other incorporated city, any part of which lies within the three-mile extension which includes, among other cities, the cities of Southgate and Los Angeles.

The next question which has been raised involves a determination of whether or not automobiles picked up from the General Motors plant in question were in fact picked up at a

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[fol. 799]



point within the commercial zone of Maywood. The city engineer's office of the City of Southgate has provided information indicating that the General Motors plant in question lies within a territory located in Los Angeles County bounded by Tweedy Boulevard on the north, Santa Fe on the east, Seminole on the south, and Alameda Street on the west; that in addition thereto the General Motors Corporation actually owns additional territory east of its present plant extending to Dolores Avenue and bounded on the north by Tweedy Boulevard and on the south by Seminole. The city engineer's office has also provided information indicating that Santa Fe Avenue extending from Tweedy Boulevard on the north to Seminole on the south is 100 feet wide from property line to property line. Sixty feet of this street lies within the City of Southgate so that the city boundary of Southgate extends considerably beyond the center of Santa Fe Avenue. Information obtained from the assistant traffic manager of the General Motors plant in question reveals that generally most new automobiles tendered to carriers for transportation are tendered through a gate located on the plant property near Seminole and Alameda Streets. The traffic department indicated, however, that recently Robertson Truck-A-Ways was called upon to transport three automobiles from the General Motors plant to Phoenix, Arizona; that Robertson received these automobiles for transportation where they were picked up on Santa Fe Avenue. They were not picked up at the usual gate near Seminole and Alameda Streets. There is still some question with respect to the exact location in the street at which the three automobiles were loaded. However, it is possible for the automobiles to be loaded at any point within 60 feet of the property line on the east side of the street within the city limits of Southgate and within the territorial scope of authority of Robertson.

In view of the fact that a question has been raised with respect to the scope of the Robertson operating authority, in the event that automobiles are received from General Motors Corporation for transportation by Robertson, care should be taken to see that automobiles are received at points within the scope of your operating authorities.

Very truly yours,

SCS:GLS

cc: District Director Dawson

*Samuel C. Shoup*  
Samuel C. Shoup  
District Supervisor

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## PROTESTANT'S EXHIBIT 106

[fol. 800]

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

NO. MC 29886 SUB 11\*

**DALLAS & MAVIS FORWARDING CO., INC.  
SOUTH BEND, INDIANA**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5,  
held at its office in Washington, D. C. on the 10th day of February,  
A. D., 1950.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

**IRREGULAR ROUTES:**

Heavy duty trucks, truck chassis, and truck trailers, except repossessed or stolen vehicles, in driveaway service,

From San Francisco, Calif., to points and places in Arizona, California, Colorado, Idaho, New Mexico, Montana, Oregon, Utah, Wyoming, Washington, and Nevada, except Reno, Nev.

New automobiles and new trucks, in driveaway service,

From places of manufacture and assembly at South Bend, Indiana, to points and places in Colorado, Idaho, Nevada, Oregon, Utah, and Washington; and those in California on and north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

From places of manufacture and assembly at Detroit, Mich., to points and places in California, Idaho, and Oregon.

From places of manufacture and assembly at Toledo, Ohio, to points and places in Wyoming within 200 miles of Denver, Colo.

From places of manufacture and assembly at Connersville, Ind., to points and places in Colorado, and those in Wyoming and Nebraska within 200 miles of Denver, Colo.

## PROTESTANT'S EXHIBIT 107

PERMIT

P-40.1

ED. MC LEESEN

HARLEY AUTO TRANSPORT, A CORPORATION,  
LONG BEACH, CALIFORNIA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 22nd day of September, A.D. 1935

**AFTER THE REPRESENTATION**, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the Regulations, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

**IT IS ORDERED**, That the said carrier be, and it is hereby, granted this Permit as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a contract carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

**IT IS FURTHER ORDERED**, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

**INITIAL ROUTES:**

Any automobiles, any trucks, any tractors, and any chassis, in initial movements, in trucking service,

From places of manufacture and assembly in Long Beach, Calif., to points in Arizona, with no transportation for compensation on return except as otherwise authorized.

Any automobiles, in initial movements, in trucking service,

From places of manufacture or assembly in Richmond, Calif., to points in Arizona, with no transportation for compensation on return except as otherwise authorized.

From points in Los Angeles County, Calif., to points in Idaho, Montana, and Wyoming, with no transportation for compensation on return except as otherwise authorized.

From the plant of the Lincoln-Mercury Motor Car Company, located near Maywood, Calif., to points in Colorado, with no transportation for compensation on return except as otherwise authorized.

RD. NO. 112320, SUBS. RD. 2

Automobiles, trucks, tractors, and chassis, in initial movements,  
in truckway service,

From Long Beach, Calif., to points in Nevada, New Mexico, and Utah, with no transportation for compensation on return except as otherwise authorized.

From points other than Long Beach in Los Angeles County, to points in Arizona, Nevada, New Mexico, and Utah, with no transportation for compensation on return except as otherwise authorized.

Automobiles, trucks, tractors, and chassis, in secondary movements,  
in truckway service,

Between Long Beach, Calif., and points in Arizona.

Between points in Arizona, Nevada, New Mexico, and Utah.

Between points in Arizona, Nevada, New Mexico, and Utah, on the one hand, and, on the other, points in Los Angeles County, Calif.

New automobiles, in secondary movements, in truckway service,

From points in Arizona to Richmond, Calif., with no transportation for compensation on return except as otherwise authorized.

New automobiles, new trucks, new tractors, and new chassis in initial movements, in driveway service,

From Long Beach, Calif., to points in Arizona, New Mexico, Nevada, and Utah, with no transportation for compensation on return except as otherwise authorized.

New automobiles, in initial movements, in driveway service,

From points in Los Angeles County, Calif., (except Los Angeles and Long Beach), to points in Arizona, New Mexico, Nevada, and Utah, with no transportation for compensation on return except as otherwise authorized.

New automobiles, new trucks, new tractors, and new chassis, in secondary movements, in driveway service,

Between points in Arizona, New Mexico, Nevada, and Utah,

Between points in Los Angeles County, Calif., on the one hand, and, on the other, points in Arizona, New Mexico, Nevada, and Utah.

Automobiles, trucks, and busses, except trailers and show paraphernalia, in initial movements, in truckway and driveway service,

From Milpitas, Calif., to points in California, Oregon, Washington, Idaho, Montana, Nevada, Utah, Wyoming, New Mexico, Arizona, and Colorado, with no transportation for compensation on return except as otherwise authorized.

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[fol. 803]

NO. NE 112391, SHEET NO. 3

Automobiles and trucks, in initial movements, in trunkway service.

From points in Los Angeles County, Calif., to the United States-Mexico boundary line at San Ysidro and Calexico, Calif., with no transportation for consumption on return except as otherwise authorized.

From the site of the Ford Motor Company plant of Long Beach, Calif., to points in Colorado, with no transportation for consumption on return except as otherwise authorized.

IT IS FURTHER ORDERED, That this permit shall be effective from the date hereof and shall remain in effect until suspended, changed, or revoked as provided in the said Act.

AND IT IS FURTHER ORDERED, That this permit shall supersede Permits Nos. NE 112391, NE 112391 Sub 4 and NE 112391 Sub 7, issued December 22, 1933, as corrected, December 22, 1934, and February 9, 1935, respectively, and that said permits be, and, they are hereby, canceled.

By the Commission, division 1.

HAROLD D. MCCOY,

Secretary.

(SEAL)

This permit embraces the operating rights in the permits superseded and canceled in the last ordering paragraph above and those operations authorized in No. NE 112391 Sub 10.

[fol. 804]

PERMIT

P-40.1

ED. MC 112391 SUB 9

**RADLEY AUTO TRANSPORT, A CORPORATION,  
LONG BEACH, CALIFORNIA**

At a Session of the **INTERSTATE COMMERCE COMMISSION**, Division 1,  
held at its office in Washington, D. C., on the 25th day  
of November, A.D. 1935

**AFTER DUE INVESTIGATION**, It appearing that the above-named  
carrier has complied with all applicable provisions of the Inter-  
state Commerce Act, and the requirements, rules, and regulations  
prescribed thereunder, and, therefore, is entitled to receive  
authority from this Commission to engage in transportation in  
interstate or foreign commerce as a motor carrier; and the Com-  
mission so finding;

**IT IS ORDERED**, That the said carrier be, and it is hereby,  
granted this Permit as evidence of the authority of the holder  
to engage in transportation in interstate or foreign commerce as  
a contract carrier by motor vehicle; subject, however, to such  
terms, conditions, and limitations as are now, or may hereafter  
be, attached to the exercise of the privileges herein granted to  
the said carrier.

**IT IS FURTHER ORDERED**, That the transportation service to  
be performed by the said carrier in interstate or foreign com-  
merce shall be as specified below:

**IRREGULAR ROUTES:**

New automobiles, in secondary movements, by truckway  
service, restricted to the transportation of automobiles  
which have had an immediately prior movement by rail,

From Long Beach and Wilmington, Calif., to points in  
California, with no transportation for compensation  
on return except as otherwise authorized.

From Milpitas, Calif., to points in that part of  
California in and south of San Francisco, Alameda,  
San Joaquin, Amador, and Alpine Counties, Calif.,  
with no transportation for compensation on return  
except as otherwise authorized.

**AND IT IS FURTHER ORDERED**, That this permit shall be effective  
from the date hereof and shall remain in effect until suspended,  
changed, or revoked as provided in the said Act.

By the Commission, division 1.

**HAROLD D. MCCOY,**  
Secretary.

(SEAL)



PERMIT

P-40.1

NO. MC 112391 SUB 14

HADLEY AUTO TRANSPORT,  
A CORPORATION,  
LONG BEACH, CALIFORNIA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1,  
held at its office in Washington, D. C., on the 15th day  
of October, A.D. 1956

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Permit as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a contract carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

**IRREGULAR ROUTES:**

New trucks, in secondary movements; in truckway and driveway service,

From points in the Los Angeles Harbor, Calif., Commercial Zone, as defined by the Commission, to points in Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties, Calif., with no transportation for compensation on return except as otherwise authorized.

AND IT IS FURTHER ORDERED, That this permit shall be effective from the date hereof and shall remain in effect until suspended, changed, or revoked as provided in the said Act.

By the Commission, division 1.

HAROLD D. MCCOY,

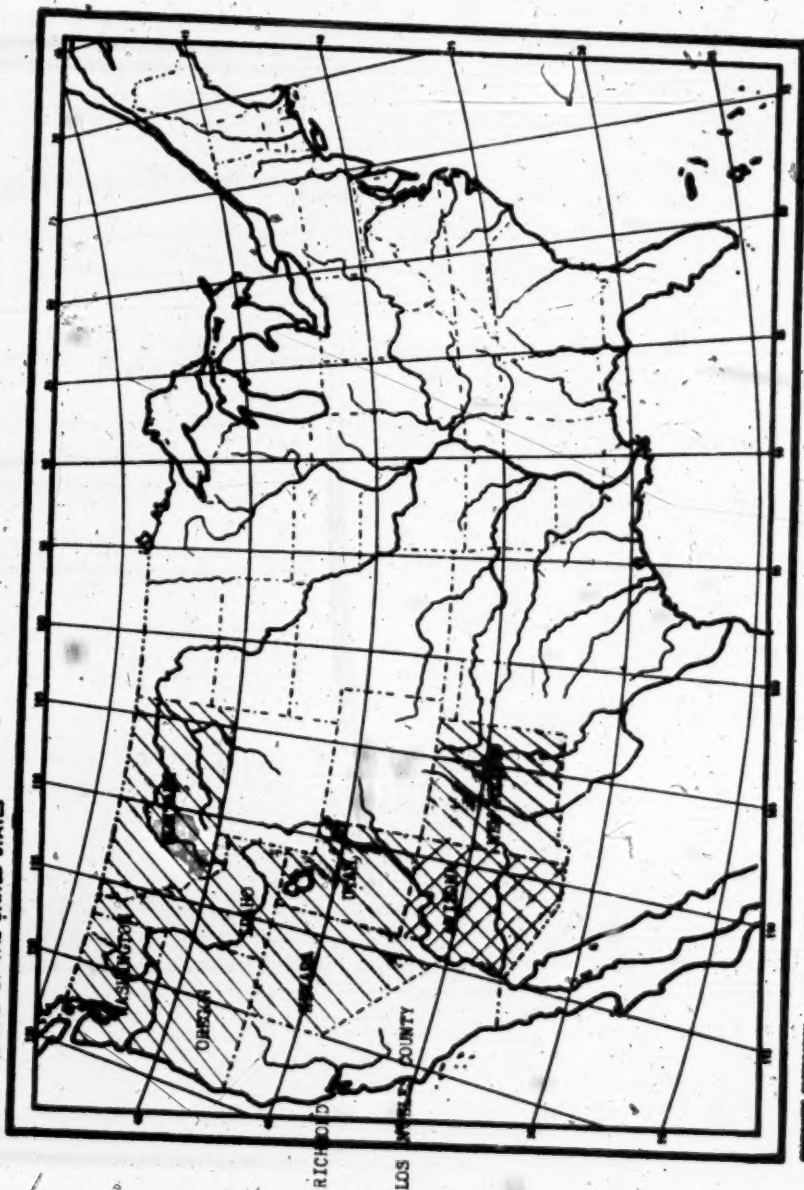
(SEAL)

Secretary

## PROTESTANT'S EXHIBIT 108

LEGEND:  
 STATES SERVED BY HADLEY AUTO TRANSPORT FROM LOS ANGELES COUNTY, CALIF.  
 STATES SERVED BY HADLEY AUTO TRANSPORT FROM RICHMOND, CALIFORNIA.  
 STATES PROPOSED TO BE SERVED BY APPLICANT.

OUTLINE MAP OF THE UNITED STATES



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 PROTESTANT'S EXHIBIT 108

PROTESTANT'S EXHIBIT 109

HADLEY AUTO TRANSPORT

COMPANY OWNED EQUIPMENT AS OF FEBRUARY 1, 1957

TRUCKS

<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>	<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>
501	Ford	1950	539	Ford	1953
502	"	1950	540	"	1953
503	"	1949	541	"	1953
504	"	1950	542	"	1953
505	"	1950	543	"	1954
506	"	1951	544	"	1954
507	"	1951	545	"	1954
508	"	1948	546	"	1954
509	"	1948	601	"	1954
510	"	1952	602	"	1955
511	"	1952	603	"	1955
401	"	1946	604	"	1955
402	"	1947	605	"	1955
512	"	1948	606	"	1955
513	"	1948	607	"	1955
514	"	1949	608	"	1955
515	"	1949	609	"	1955
516	"	1950	610	"	1955
517	"	1950	611	"	1955
518	"	1950	612	"	1956
403	"	1950	613	"	1956
404	"	1950	615	"	1956
405	"	1950	616	"	1956
406	"	1950	617	"	1956
407	"	1950	618	"	1956
408	"	1950	619	"	1956
409	"	1950	620	"	1956
410	"	1950	621	"	1956
411	"	1950	622	"	1956
412	"	1950	623	"	1956
413	"	1950	624	"	1956
414	"	1950	625	"	1956
415	"	1950	626	"	1956
416	"	1950	627	"	1956
417	"	1950	628	"	1956
418	"	1950	629	"	1956
419	"	1950	630	"	1956
519	"	1950	631	"	1956
520	"	1950	632	"	1956
521	"	1950	633	"	1956
522	"	1950	634	"	1956
523	"	1951	635	"	1956
524	"	1951	636	"	1956
525	"	1951	637	"	1956
526	"	1952	638	"	1956
527	"	1952	639	"	1956
528	"	1952	640	"	1956
529	"	1952	641	"	1956
530	"	1952	642	"	1956
531	"	1952	643	"	1956
532	"	1952	644	"	1956
533	"	1953	645	"	1956
534	"	1953	646	"	1956
535	"	1953	647	"	1956
536	"	1953	648	"	1956
537	"	1953	649	"	1956
538	"	1953			

[fol. 808]

HADLEY AUTO TRANSPORTCOMPANY OWNED EQUIPMENT AS OF FEBRUARY 1, 1957SEMI-TRAILERS

<u>COMPANY</u> <u>NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>	<u>COMPANY</u> <u>NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>
501T	Orpco	1946	708T	Homemade	1953
502T	"	1946	709T	"	1953
503T	"	1946	533T	"	1953
504T	"	1950	534T	"	1953
505T	"	1950	535T	"	1953
506T	"	1946	536T	"	1953
507T	"	1946	537T	"	1953
508T	Pike	1947	538T	Acme	1954
509T	"	1947	539T	Durobilt	1954
510T	Orpco	1946	540T	"	1954
511T	"	1948	710T	"	1954
701T	Durobilt	1946	419T	"	1954
702T	Larde	1951	541T	"	1954
401T	Durobilt	1950	542T	Homemade	1954
703T	Homemade	1950	543T	"	1954
402T	"	1950	544T	"	1954
403T	"	1950	545T	"	1954
404T	"	1950	601T	"	1954
405T	"	1950	602T	"	1954
406T	"	1950	603T	"	1955
407T	"	1950	604T	"	1955
408T	"	1950	605T	"	1955
409T	"	1950	606T	"	1955
410T	"	1950	607T	"	1955
411T	"	1950	608T	"	1955
412T	"	1950	609T	"	1955
413T	"	1950	610T	"	1955
414T	"	1950	611T	"	1955
415T	"	1950	711T	"	1955
416T	"	1950	712T	"	1955
417T	"	1950	713T	"	1955
418T	"	1950	714T	"	1955
512T	"	1950	715T	"	1955
513T	"	1950	716T	"	1955
514T	"	1950	717T	"	1955
515T	"	1950	718T	"	1955
516T	"	1950	719T	"	1955
517T	"	1950	720T	"	1955
518T	"	1950	721T	"	1955
519T	"	1950	722T	"	1956
520T	"	1950	612T	"	1956
521T	"	1951	613T	"	1956
522T	"	1951	614T	"	1956
523T	"	1951	615T	"	1956
524T	Traffic Trans.	1950	616T	"	1956
525T	Homemade	1952	617T	"	1956
526T	"	1952	618T	"	1956
704T	"	1952	619T	"	1956
527T	"	1952	620T	"	1956
528T	"	1952	621T	"	1956
529T	"	1952	622T	"	1956
530T	Traffic Trans.	1952	623T	"	1956
531T	"	1952	624T	"	1956
532T	"	1952	625T	"	1956
705T	"	1952	626T	"	1956
706T	"	1952	627T	"	1956
707T	Homemade	1953	628T	"	1956

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HADLEY AUTO TRANSPORTCOMPANY OWNED EQUIPMENT AS OF FEBRUARY 1, 1957SEMI-TRAILERS

<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>
629T	Homemade	1956
630T	"	1956
631T	"	1956
723T	"	1956
632T	Durobilt	1956
633T	"	1956
633T	"	1956
634T	"	1956
635T	"	1956
636T	"	1956
637T	"	1956
638T	"	1957
639T	"	1957
640T	"	1957
641T	"	1957
642T	"	1957
643T	"	1957
644T	"	1957
645T	"	1957
646T	"	1957
724T	"	1957
725T	"	1957
726T	"	1957
727T	"	1957
728T	"	1957
728T	"	1957
729T	"	1957
730T	"	1957
731T	"	1957
732T	"	1957
733T	"	1957
734T	"	1957
735T	"	1957



[fol. 810]

HADLEY AUTO TRANSPORTLEASED EQUIPMENT AS OF FEBRUARY 1, 1957TRUCKS

<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>	<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>
L-1	Ford	1952	L-35	Ford	1953
L-3	"	1956	L-36	"	1952
L-4	"	1955	L-37	"	1953
L-5	"	1955	L-38	"	1954
L-6	"	1955	L-39	"	1952
L-10	"	1955	L-41	"	1955
L-14	"	1955	L-42	"	1955
L-17	"	1955	L-43	"	1953
L-18	"	1955	L-44	"	1953
L-21	"	1955	L-45	"	1949
L-23	"	1953	L-46	"	1955
L-24	"	1952	L-47	"	1952
L-26	"	1954	L-48	"	1955
L-27	"	1954	L-49	Dodge	1955
L-30	"	1946	L-50	"	1955
L-31	"	1953	L-51	Ford	1956
L-32	"	1951	L-52	"	1956
L-34	"	1955			

TRAILERS

<u>COMPANY NUMBER</u>	<u>MAKE</u>	<u>YEAR</u>
L-32A	Acme	1951
L-37A	Homemade	1931
L-43A	Whitehead Kale	1946
L-26A	Fager	1935
L-27A	Homemade	1935
L-31A	Pike	1949
L-38A	Homemade	1950
L-36A	Acme	1953
L-30A	Wentworth	1930
L-39A	Traffic Transport	1947
L-49A	Bonnin	1955
L-50A	"	1955

COMPANY OWNED SERVICE CARS

1950 Ford Pickup  
 1953 Ford Pickup  
 1954 Ford Ranch Wagon  
 1955 Ford Ranch Wagon  
 1950 Ford Tudor Sedan  
 1950 Ford Ranch Wagon  
 1952 Ford Country Sedan  
 1957 Lincoln Coupe  
 1957 Ford Victoria

## PROTESTANT'S EXHIBIT 110

LIST OF CITIES SERVED BY  
HAGLEY AUTO TRANSPORT IN THE STATES OF  
ARIZONA, IDAHO, NEVADA, NEW MEXICO, UTAH AND MONTANA

ARIZONA

Ajo  
Benson  
Bisbee  
Buckeye  
Casa Grande  
Chandler  
Clifton  
Coolidge  
Cottonwood  
Douglas  
Duncan  
Flagstaff  
Glendale  
Gila Bend  
Globe  
Holbrook  
Kingman  
Mesa  
Nogales  
Parker  
Phoenix  
Prescott  
Safford  
St. Johns  
San Manuel  
Springerville  
Tombstone  
Tucson  
Wickenburg  
Willcox  
Williams  
Winslow  
Yuma

IDAHO

Aberdeen  
American Falls  
Arco  
Ashton  
Blackfoot  
Boise  
Bonners Ferry  
Buhl  
Burley  
Caldwell  
Cascade  
Coeur d'Alene  
Journey  
Priggs  
Dubois

IDAHO (Con't.)

Arnett  
Cenessee  
Gooding  
Grace  
Grangeville  
Hailey  
Idaho Falls  
Jerome  
Kellogg  
Lewiston  
Lucky  
Malad City  
Meridian  
Montpelier  
Moscow  
Mountain Home  
Nampa  
Orofino  
Payette  
Pocatello  
Preston  
Rebur  
Rigby  
Rupert  
Sandpoint  
Salmon  
Shoshone  
Soda Springs  
St. Anthony  
St. Maries  
Twin Falls  
Wallace  
Weiser

NEVADA

Academy  
Bosman  
Butte  
Deer Lodge  
Dillon  
Juni  
Hamilton  
Helena  
Kallispell  
Libby  
Missoula  
Phillipsburg  
Plains  
Polsen  
Ronan

MONTANA (Con't.)

Thompson Falls  
Townsend  
Whitefish  
Whitehall

NEVADA

Battle Mountain  
Boulder City  
Carson City  
Elko  
Ely  
Fallon  
Gardnerville  
Hawthorne  
Henderson  
Las Vegas  
Love Lock  
Mercury  
Pioche  
Reno  
Stewart  
Tonopah  
Wells  
Winnemucca  
Yerington

NEW MEXICO

Alamogordo  
Albuquerque  
Anthony  
Artesia  
Belen  
Carlsbad  
Carrizozo  
Clayton  
Clovis  
Deming  
Española  
Farmington  
Ft. Sumner  
 Gallup  
Grants  
Hatch  
Hobbs  
Las Cruces  
Las Vegas  
 Lordsburg  
 Lovington  
 Los Alamos

NEW MEXICO (Con't.)

Mountainair  
Portales  
Raton  
Roswell  
Santa Fe  
Santa Rosa  
Silver City  
Torrero  
Springer  
Taos  
Truth or  
Consequences  
Tucuman  
Laughlin

UTAH

African Fork  
Bountiful  
Brigham City  
Cedar City  
Coalville  
Delta  
Draper  
Fillmore  
Goshen  
Harrison  
Heber  
Helper  
Layton  
Logan  
Magna  
Midvale  
Mojave  
Morgan  
Mt. Pleasant  
Murray  
Nephi  
Ogden  
Panguitch  
Price  
Provo  
Richfield  
Riverton  
Roosevelt  
St. George  
Salt Lake City  
Spanish Fork  
Springville  
Tooele  
Tremonton  
Vernal

## PROTESTANT'S EXHIBIT 111

VEHICLES TRANSPORTED BY HADLEY AUTO TRANSPORT  
FROM LOS ANGELES COUNTY TO THE STATES OF  
ARIZONA, NEW MEXICO, NEVADA, UTAH, IDAHO, MONTANA & WYOMING  
1956

	Arizona	New Mexico	Nevada	Utah	Idaho	Wyoming	Montana
January	945	35	55	0	0	0	0
February	920	45	25	5	0	0	0
March	792	10	50	30	0	0	0
April	599	60	75	135	25	0	0
May	720	95	70	90	0	45	0
June	775	30	60	85	0	25	0
July	803	10	90	0	0	0	0
August	737	65	65	15	0	0	0
September	324	115	10	115	15	25	15
October	924	335	90	90	20	25	10
November	1156	125	125	295	45	95	45
December	1350	350	145	155	40	100	20
Totals	10,047	1,295	840	1015	145	315	90

812

## PROTESTANT'S EXHIBIT 112

HAILEY AUTO TRANSPORT

BALANCE SHEET

December 31, 1936

ASSETS

Cash		45,552.85	
Payroll Account		10,624.92	
Working Funds - Long Beach		600.00	
Working Funds - San Jose		2,000.00	
Special Deposits		10,796.00	
Accounts Receivable - Customers		314,173.97	
Accounts Receivable - Others		3,831.34	
Prepayments		3,072.54	
Material & Supplies		39,874.19	
Total Current Assets			911,142.81
Land & Land Rights			
Structures		38,558.53	
Less: Reserve for Depreciation	76,658.36		
Revenue Equipment	74,112.25	69,225.11	
Less: Reserve for Depreciation	84,186.88		
Service Cars	35,124.17	51,292.71	
Less: Reserve for Depreciation	17,791.42		
Shop Equipment	8,692.34	9,299.08	
Less: Reserve for Depreciation	24,078.05		
Office Equipment	71,732.20	16,904.85	
Less: Reserve for Depreciation	28,305.34		
Miscellaneous Equipment	51,614.41	23,143.93	
Less: Reserve for Depreciation	68,898.62		
Improvements to Leasehold Property	100,892.84	58,808.78	
Less: Reserve for Depreciation	48,919.25		
Unfinished Construction	26,670.52	18,248.73	
Total Tangible Property		651,784.92	812,293.64
Organization			
Franchise		804.06	
Total Intangible Property		772.41	8506.97
Investment Securities & Advances			1,500.00
TOTAL ASSETS			1,764,553.12
Accounts Payable		411,670.96	
Wages Payable		5,684.65	
Accrued Taxes		181,430.55	
Other Current Liabilities		2754.25	
Total Current Liabilities			743,440.71
Equipment Obligations			
Real Estate Mortgage Payable			211,200.00
Injuries, Loss & Damage Reserve			556,000.00
Common Capital Stock			25,000.00
Unappropriated Surplus			500,000.00
TOTAL LIABILITIES			1,764,553.12

## APPLICANT'S EXHIBIT 713

Equipment owned, operated and assigned by Pacific Motor Trucking Company at Melrose, Raymer and Southgate, California, as of December 31, 1956:

Melrose:

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
A-269	1 Car Tractor	1952	GMC	HCV45L
A-271	1 Car Tractor	1952	GMC	HCV45L
A-272	1 Car Tractor	1952	GMC	455-30V
A-273	1 Car Tractor	1952	GMC	455-30V
A-277	1 Car Tractor	1952	GMC	6503
A-283	1 Car Tractor	1952	Chevrolet	6503
A-284	1 Car Tractor	1953	Chevrolet	6503
A-285	1 Car Tractor	1953	Chevrolet	6503
A-286	1 Car Tractor	1953	Chevrolet	6503
A-287	1 Car Tractor	1953	Chevrolet	6503
A-288	1 Car Tractor	1953	Chevrolet	6503
A-289	1 Car Tractor	1953	Chevrolet	6503
A-298	1 Car Tractor	1953	Chevrolet	6503
B-222-D	1 Car Tractor	1955	GMC	455-30V
B-223-D	1 Car Tractor	1955	GMC	D66347
B-224-D	1 Car Tractor	1955	GMC	D66347
B-225-D	1 Car Tractor	1955	GMC	D66347
B-243-D	1 Car Tractor	1955	GMC	D66347
B-244-D	1 Car Tractor	1955	GMC	D66347
B-245-D	1 Car Tractor	1955	GMC	D66347
B-246-D	1 Car Tractor	1955	GMC	D66347
B-247-D	1 Car Tractor	1955	GMC	D66347
B-248-D	1 Car Tractor	1955	GMC	D66347
B-258	1 Car Tractor	1955	GMC	D66347
B-259	1 Car Tractor	1955	GMC	D66347
B-260	1 Car Tractor	1955	GMC	454-30V
B-261	1 Car Tractor	1955	GMC	454V
340	Tractor	1955	GMC	454V
341	Tractor	1955	GMC	454V
342	Tractor	1955	GMC	455-30
343	Tractor	1955	GMC	455-30
344	Tractor	1955	GMC	455-30
345	Tractor	1955	GMC	403
374-D	2 Car Tractor	1955	GMC	403
375-D	2 Car Tractor	1956	GMC	403
376-D	2 Car Tractor	1956	GMC	DM66347A
377-D	2 Car Tractor	1956	GMC	DM66347A
378-D	2 Car Tractor	1956	GMC	DM66347A
383-D	2 Car Tractor	1956	GMC	DM66347A
384-D	2 Car Tractor	1956	GMC	DM66347A
503	4 Car Semi	1939	GMC	DM66347A
504	4 Car Semi	1939	Whitehead Kales	SCPC
505	4 Car Semi	1939	Whitehead Kales	SCPC
506	4 Car Semi	1939	Whitehead Kales	SCPC
507	4 Car Semi	1939	Whitehead Kales	SCPC
510	3 Car Semi	1946	Whitehead Kales	SCPC
511	3 Car Semi	1946	PMT	SCPC
		1946	PMT	



[fol. 815]

Docket No. MC 78787, Sub 37  
 Exhibit No. \_\_\_\_\_  
 Witness \_\_\_\_\_  
 Sheet 2 of A Sheets

Equipment owned, operated and assigned by Pacific Motor  
 Trucking Company at Melrose, Raymer and Southgate, California, as of  
 December 31, 1956:

Melrose: (Cont'd.)

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
514	3 Car Semi	1946	FMT	-
518	3 Car Semi	1946	FMT	-
524	3 Car Semi	1948	FMT	-
526	3 Car Semi	1948	FMT	-
531	3 Car Semi	1948	FMT	-
533	3 Car Semi	1948	FMT	-
540	3 Car Semi	1949	FMT	-
550	3 Car Semi	1950	Homemade	-
551	3 Car Semi	1950	Homemade	-
553	3 Car Semi	1950	Homemade	-
555	3 Car Semi	1953	Homemade	-
556	3 Car Semi	1953	Homemade	-
557	3 Car Semi	1953	Homemade	-
560	3 Car Semi	1953	Homemade	-
561	3 Car Semi	1953	Homemade	-
562	3 Car Semi	1953	Homemade	-
566	3 Car Semi	1953	Homemade	-
567	3 Car Semi	1953	Homemade	-
568	3 Car Semi	1953	Homemade	-
569	3 Car Semi	1955	Durebilt	1014
570	3 Car Semi	1955	Durebilt	1014
627	4 Car Semi	1955	Durebilt	1014
628	4 Car Semi	1955	Durebilt	1014
629	4 Car Semi	1955	Durebilt	1014
630	4 Car Semi	1955	Durebilt	1014
631	4 Car Semi	1955	Durebilt	1014
636	4 Car Semi	1955	Durebilt	1014
637	4 Car Semi	1955	Durebilt	1014

Raymer:

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
A-207	2 Car Truck	1948	GMC	PC-455
A-208	2 Car Truck	1948	GMC	PC-455
A-276	1 Car Tractor	1952	Chevrolet	6503
A-277	1 Car Tractor	1952	Chevrolet	6503
A-280	1 Car Tractor	1952	Chevrolet	6503
A-281	1 Car Tractor	1952	Chevrolet	6503
A-282	1 Car Tractor	1953	Chevrolet	6503
A-290	1 Car Tractor	1953	Chevrolet	6503
A-291	1 Car Tractor	1953	Chevrolet	6503
A-292	1 Car Tractor	1953	Chevrolet	6503
A-293	1 Car Tractor	1955	GMC	455-30V
A-294	2 Car Tractor	1955	GMC	455-30V
B-202	2 Car Tractor	1955	GMC	455-30V
B-203	2 Car Tractor	1955	GMC	455-30V
B-212	2 Car Tractor	1955	GMC	455-30V

[fol. 816]

Docket No. MC 78787, Sub 37  
 Exhibit No. \_\_\_\_\_  
 Witness \_\_\_\_\_  
 Sheet 1 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor  
 Trucking Company at Melrose, Raymer and Southgate, California, as of  
 December 31, 1956:

Raymer: (Cont'd.)

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
B-232-D	1 Car Tractor	1955	GMC	D66347
B-233-D	1 Car Tractor	1955	GMC	D66347
B-234-D	1 Car Tractor	1955	GMC	D66347
B-235-D	1 Car Tractor	1955	GMC	D66347
B-236-D	1 Car Tractor	1955	GMC	D66347
B-237-D	1 Car Tractor	1955	GMC	D66347
B-238-D	1 Car Tractor	1955	GMC	D66347
B-239	1 Car Tractor	1955	GMC	405-27
B-240	1 Car Tractor	1955	GMC	404
B-242	2 Car Truck	1955	GMC	454-30V
B-249	1 Car Tractor	1955	GMC	453-30V
B-250	1 Car Tractor	1955	GMC	453-30V
B-251	1 Car Tractor	1955	GMC	453-30V
B-252	1 Car Tractor	1955	GMC	454-30V
B-253	2 Car Truck	1955	GMC	454-30V
B-254	1 Car Tractor	1955	GMC	454-30V
B-255	1 Car Tractor	1955	GMC	454-30V
B-256	1 Car Tractor	1955	GMC	454-30V
B-257	1 Car Tractor	1955	GMC	454-30V
B-268	1 Car Tractor	1955	GMC	454V
B-267	1 Car Tractor	1955	GMC	454V
352	Tractor	1955	Chevrolet	6403
353	Tractor	1955	Chevrolet	6403
354	Tractor	1955	Chevrolet	6403
355	Tractor	1955	Chevrolet	6403
356	Tractor	1955	Chevrolet	6403
357	Tractor	1955	Chevrolet	6403
358	Tractor	1955	Chevrolet	6403
359	Tractor	1955	Chevrolet	6403
370	1 Car Tractor	1955	Chevrolet	6403
371	1 Car Tractor	1955	Chevrolet	6403
372	1 Car Tractor	1955	Chevrolet	6403
373	1 Car Tractor	1955	Chevrolet	6403
379-D	2 Car Tractor	1956	GMC	DM66347A
380-D	2 Car Tractor	1956	GMC	DM66347A
381-D	2 Car Tractor	1956	GMC	DM66347A
382-D	2 Car Tractor	1956	GMC	DM66347A
385-D	Tractor	1956	GMC	DM66347A
386-D	Tractor	1956	GMC	DM66347A
387-D	Tractor	1956	GMC	DM66347A
388-D	Tractor	1956	GMC	DM66347A
389-D	Tractor	1956	GMC	DM66347A
390-D	Tractor	1956	GMC	DM66347A
391-D	Tractor	1956	GMC	DM66347A
392-D	Tractor	1956	GMC	DM66347A
393-D	Tractor	1956	GMC	DM66347A
394-D	Tractor	1956	GMC	DM66347A

[fol. 817]

Docket No. MC 76787, Sub 37  
 Exhibit No. \_\_\_\_\_  
 Witness \_\_\_\_\_  
 Sheet 1 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor  
 Trucking Company at Melrose, Raymer and Southgate, California, as of  
 December 31, 1956:

Raymer: (Cont'd.)

Unit No.	Type	Year	Make	Model
409	2 Car Trailer	1946	C&C	-
411	2 Car Trailer	1946	C&C	-
417	2 Car Trailer	1930	Atlas	40XEQ
418	2 Car Trailer	1931	PMT	40XEQ
420	2 Car Trailer	1932	Newcomer	40XEQ
500	3 Car Semi	1934	Francis	L
508	3 Car Semi	1940	MHS	SDL
509	3 Car Semi	1946	PMT	-
513	3 Car Semi	1946	PMT	-
515	3 Car Semi	1946	PMT	-
516	3 Car Semi	1946	PMT	-
517	3 Car Semi	1946	PMT	-
522	3 Car Semi	1946	PMT	-
523	3 Car Semi	1948	PMT	-
525	3 Car Semi	1948	PMT	-
527	3 Car Semi	1948	PMT	-
528	3 Car Semi	1948	PMT	-
529	3 Car Semi	1948	PMT	-
532	3 Car Semi	1948	PMT	-
534	3 Car Semi	1948	PMT	-
535	3 Car Semi	1948	PMT	-
536	3 Car Semi	1948	PMT	-
537	3 Car Semi	1948	PMT	-
539	3 Car Semi	1948	PMT	-
541	3 Car Semi	1949	PMT	-
542	3 Car Semi	1949	PMT	-
543	3 Car Semi	1949	PMT	-
544	3 Car Semi	1949	PMT	-
546	3 Car Semi	1949	PMT	-
547	3 Car Semi	1949	PMT	-
548	3 Car Semi	1949	PMT	-
549	3 Car Semi	1949	PMT	-
552	3 Car Semi	1950	Homemade	-
554	3 Car Semi	1950	Homemade	-
556	3 Car Semi	1953	Homemade	-
559	3 Car Semi	1953	Homemade	-
563	3 Car Semi	1953	Homemade	-
564	3 Car Semi	1953	Homemade	-
565	3 Car Semi	1953	Homemade	-
571	2 Car Semi	1955	Durobilt	1014
572	2 Car Semi	1955	Durobilt	1014
574	2 Car Semi	1955	Durobilt	1014
575	2 Car Semi	1955	Durobilt	1014
582	3 Car Semi	1930	Pacific	-
583	3 Car Semi	1930	Pacific	-
584	3 Car Semi	1947	Pike	-
585	3 Car Semi	1947	Pike	-

Docket No. MC 78787, Sub 37  
 Exhibit No. \_\_\_\_\_  
 Witness \_\_\_\_\_  
 Sheet 5 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor  
 Trucking Company at Molrose, Raymer and Southgate, California, as of  
 December 31, 1956:

Raymer: (Cont'd.)

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
586	3 Car Semi	1947	Pilco	-
597	4 Car Semi	1955	Fruehauf	HC135-5
598	4 Car Semi	1955	Fruehauf	HC135-5
599	4 Car Semi	1955	Fruehauf	HC135-5
600	4 Car Semi	1955	Fruehauf	HC135-5
601	4 Car Semi	1955	Fruehauf	HC135-5
602	4 Car Semi	1955	Fruehauf	HC135-5
603	4 Car Semi	1955	Fruehauf	HC135-5
604	4 Car Semi	1955	Fruehauf	HC135-5
605	4 Car Semi	1955	Fruehauf	HC135-5
606	4 Car Semi	1955	Fruehauf	HC135-5
613	4 Car Semi	1955	Fruehauf	HC135-5
614	4 Car Semi	1955	Fruehauf	HC135-5
615	4 Car Semi	1955	Fruehauf	HC135-5
616	4 Car Semi	1955	Fruehauf	HC135-5
617	4 Car Semi	1955	Fruehauf	HC135-5
618	4 Car Semi	1955	Fruehauf	HC135-5
619	4 Car Semi	1955	Fruehauf	HC135-5
620	4 Car Semi	1955	Fruehauf	HC135-5
621	4 Car Semi	1955	Fruehauf	HC135-5
622	4 Car Semi	1955	Fruehauf	HC135-5
623	4 Car Semi	1955	Fruehauf	HC135-5
624	4 Car Semi	1955	Fruehauf	HC135-5
625	4 Car Semi	1955	Fruehauf	HC135-5
626	4 Car Semi	1955	Fruehauf	HC135-5
627	4 Car Semi	1955	Fruehauf	HC135-5
632	4 Car Semi	1955	Fruehauf	HC135-5
633	4 Car Semi	1956	Durobilt	1014
634	4 Car Semi	1956	Durobilt	1014
635	4 Car Semi	1956	Durobilt	1014

Southgate:

A-210	2 Car Truck	1948	GMC	PC-455
A-227	1 Car Tractor	1950	Chevrolet	6403
A-243	1 Car Tractor	1950	Chevrolet	6403
A-249	1 Car Tractor	1950	Chevrolet	6403
A-274	2 Car Truck	1953	GMC	PC-455
A-275	2 Car Truck	1952	GMC	PC-455
A-278	1 Car Tractor	1952	Chevrolet	6503
A-294	2 Car Truck	1953	GMC	455-30V
A-295	2 Car Truck	1953	GMC	455-30V
A-296	2 Car Truck	1953	GMC	455-30V
A-297	2 Car Truck	1953	GMC	454-30V
B-200	2 Car Tractor	1955	GMC	455-30V
B-201	2 Car Tractor	1955	GMC	455-30V
B-204	2 Car Truck	1955	GMC	455-30V

[fol. 819]

Docket No. MC 78787, Sub 37

Exhibit No. \_\_\_\_\_

Witness \_\_\_\_\_

Sheet 6 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor Trucking Company at Melrose, Raymer and Southgate, California, as of December 31, 1956:

Southgate: (Cont'd.)

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
B-205	2 Car Truck	1955	GMC	455-30V
B-206	2 Car Truck	1955	GMC	455-30V
B-207	2 Car Truck	1955	GMC	455-30V
B-208	2 Car Truck	1955	GMC	455-30V
B-209	2 Car Tractor	1955	GMC	455-30V
B-210	2 Car Truck	1955	GMC	455-30V
B-211	2 Car Truck	1955	GMC	455-30V
B-213	2 Car Truck	1955	GMC	455-30V
B-214	2 Car Truck	1955	GMC	455-30V
B-215	2 Car Truck	1955	GMC	455-30V
B-216	2 Car Truck	1955	GMC	455-30V
B-217	2 Car Truck	1955	GMC	455-30V
B-218	2 Car Tractor	1955	GMC	454-30V
B-219	2 Car Tractor	1955	GMC	454-30V
B-220	2 Car Tractor	1955	GMC	453-30
B-221	2 Car Tractor	1955	GMC	453-30
B-226-D	2 Car Truck	1955	GMC	D66347
B-227-D	2 Car Truck	1955	GMC	D66347
B-228-D	2 Car Truck	1955	GMC	D66347
B-229-D	2 Car Truck	1955	GMC	D66347
B-230-D	2 Car Truck	1955	GMC	D66347
B-231-D	2 Car Truck	1955	GMC	D66347
B-241	2 Car Truck	1955	GMC	454-30V
B-262	2 Car Truck	1955	GMC	454-30V
B-263	2 Car Truck	1955	GMC	454V
B-264	2 Car Truck	1955	GMC	454V
B-265	2 Car Truck	1955	GMC	454V
B-266	2 Car Truck	1955	GMC	454V
B-267	2 Car Truck	1955	GMC	454V
332	Tractor	1948	GMC	PC-455
333	Tractor	1948	GMC	PC-455
334	Tractor	1955	GMC	403V
335	Tractor	1955	GMC	403V
336	Tractor	1955	GMC	M454V
337	Tractor	1955	GMC	454V
338	Tractor	1955	GMC	454V
339	Tractor	1955	GMC	454V
346	Tractor	1955	GMC	453V
347	Tractor	1955	GMC	454
348	Tractor	1955	GMC	M455V
349	Tractor	1955	GMC	455V
350	Tractor	1955	Chevrolet	6403
351	Tractor	1955	Chevrolet	6403
400	2 Car Trailer	1930	Atlas	40XEQ
401	2 Car Trailer	1930	Atlas	40XEQ
402	2 Car Trailer	1936	PMT	30XEQ
403	2 Car Trailer	1936	PMT	30XEQ



Docket No. MC 78787, Sub 37  
Exhibit No. \_\_\_\_\_

Witness \_\_\_\_\_

Sheet 7 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor  
Trucking Company at Melrose, Raymer and Southgate, California, as of  
December 31, 1956:

Southgate: (Cont'd.)

Unit No.	Type	Year	Make	Model
404	2 Car Trailer	1936	PMT	
405	2 Car Trailer	1941	PMT	40XBQ
406	2 Car Trailer	1941	PMT	-
407	2 Car Trailer	1946	C&C	-
408	2 Car Trailer	1946	C&C	-
410	2 Car Trailer	1946	C&C	-
412	2 Car Trailer	1946	C&C	-
413	2 Car Trailer	1930	Linton	-
414	2 Car Trailer	1931	Lapoor	40XBQ
415	2 Car Trailer	1935	Standard	-
416	2 Car Trailer	1935	Fed. Knuckey	PT-2
419	2 Car Trailer	1937	Reliance	-
421	2 Car Trailer	1937	Homomade	-
422	2 Car Trailer	1953	Homomade	-
423	2 Car Trailer	1953	Homomade	-
424	2 Car Trailer	1955	Homomade	-
425	2 Car Trailer	1955	Homomade	-
426	2 Car Trailer	1955	Homomade	-
427	2 Car Trailer	1955	Homomade	-
428	2 Car Trailer	1955	Homomade	-
429	2 Car Trailer	1955	Homomade	-
430	2 Car Trailer	1955	Homomade	-
431	2 Car Trailer	1955	Homomade	-
432	2 Car Trailer	1955	Homomade	-
433	2 Car Trailer	1955	Homomade	-
434	2 Car Trailer	1955	Homomade	-
435	2 Car Trailer	1955	Homomade	-
512	3 Car Semi	1946	Homomade	-
521	3 Car Semi	1946	PMT	-
530	3 Car Semi	1948	PMT	-
573	2 Car Semi	1955	PMT	-
576	2 Car Semi	1955	Durobilt	1014
577	2 Car Semi	1955	Durobilt	1014
578	2 Car Semi	1955	Durobilt	1014
579	2 Car Semi	1955	Durobilt	1014
580	2 Car Semi	1955	Durobilt	1014
581	2 Car Semi	1955	Durobilt	1014
587	4 Car Semi	1955	Durobilt	1014
588	4 Car Semi	1955	Fruchauf	1014
589	4 Car Semi	1955	Fruchauf	HC135-5
590	4 Car Semi	1955	Fruchauf	HC135-5
591	4 Car Semi	1955	Fruchauf	HC135-5
592	4 Car Semi	1955	Fruchauf	HC135-5
593	4 Car Semi	1955	Fruchauf	HC135-5
594	4 Car Semi	1955	Fruchauf	HC135-5
595	4 Car Semi	1955	Fruchauf	HC135-5
596	4 Car Semi	1955	Fruchauf	HC135-5

[fol. 821]

Docket No. MC 78787, Sub 37

Exhibit No. \_\_\_\_\_

Witness \_\_\_\_\_

Sheet 8 of 8 Sheets

Equipment owned, operated and assigned by Pacific Motor Trucking Company at Melrose, Raymer and Southgate, California, as of December 31, 1956:

Southgate: (Cont'd.)

<u>Unit No.</u>	<u>Type</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>
607	4 Car Semi	1955	Fruehauf	HC135-5
608	4 Car Semi	1955	Fruehauf	HC135-5
609	4 Car Semi	1955	Fruehauf	HC135-5
610	4 Car Semi	1955	Fruehauf	HC135-5
611	4 Car Semi	1955	Fruehauf	HC135-5
612	4 Car Semi	1955	Fruehauf	HC135-5

**PROTESTANT'S EXHIBIT 114**  
**CERTIFICATES OF PUBLIC CONVENIENCE**  
**AND NECESSITY**

**INTERSTATE, IRREGULAR ROUTE - MC 52858**

New Automobiles, New Trucks, and Automobile Parts, restricted to initial and/or secondary movements, in truckway and driveway service,

From Portland, Ore., and Vancouver, Wash., to points and places in Oregon, Washington and Idaho.

From Seattle, Wash. to points and places in Montana, Washington, that part of Idaho north of and including Idaho County, and that part of Oregon north of and including Lane, Deschutes, Crook, Grant, and Baker Counties, Ore.

Return, with no transportation for compensation except as otherwise authorized, to the above specified origin points.

Automobiles, Trucks, and Automobile Parts, new and used, restricted to secondary and/or subsequent movements, in truckway and driveway service,

Between Portland, Ore., and Vancouver, Wash., on the one hand, and, on the other, points and places in Oregon, Washington, and Idaho.

Automobiles, Trucks, and Automobile Parts, new and used, restricted to secondary movements, in truckway service,

Between Seattle, Wash., and points and places in Montana, Washington, that part of Idaho north of and including Idaho County, and that part of Oregon north of and including Lane, Deschutes, Crook, Grant, and Baker Counties, Ore.

**INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 4**

Automobiles, Busses, Trucks, and Chassis, in truckway service, in secondary movements,

Between all points and places in Oregon, Washington, Idaho, and Montana.

Cabs and Bodies,

Between all points and places in Oregon, Washington, Idaho, and Montana

Agricultural Tractors weighing not in excess of 3,500 pounds,

Between all points and places in Oregon, Washington, Idaho, and Montana except between Portland, Ore., and points and places in Oregon on U.S. Highway 99.

**INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 5**

Automobiles and Trucks, by the truckway method, in secondary movements,

Between points in California, on the one hand, and, on the other, points in Oregon, Washington, Idaho, and Montana, traversing Nevada for operating convenience only, except that (1) no service is authorized from El Segundo, Calif., to points in Idaho, Oregon, and Washington, and (2) no service is authorized in the transporta-

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 5 (Cont)

tion of trucks (A) from San Francisco and Oakland, Calif., to points in Oregon and Washington, and (B) from Los Angeles, Calif., to points in Washington.

Automobiles, Busses, and Trucks, by the driveway method, in secondary movements.

Between points in Oregon, Washington, Idaho, and Montana, except that no service is authorized (1) at Seattle, Wash., and (2) between Portland, Ore., and Vancouver, Wash., on the one hand, and, on the other, points in Oregon, Washington, and Idaho.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 11

(A) Automobiles, Trucks, Busses, and Chassis, in secondary movements.

(1) By the truckway method.

Between points in Idaho, Montana, Oregon, and Washington, on the one hand, and, on the other, points in Nevada, Utah, and Wyoming.

(2) By the driveway method.

(a) Between points in Oregon and Washington, on the one hand, and, on the other, points in Nevada and Wyoming, and (b) between points in Oregon, on the one hand, and, on the other, points in Utah.

(B) Trailers and Semi-Trailers except those designed to be drawn by passenger automobiles, initial movements, by the truckway method, from Spokane, Wash., and points within 10 miles of Spokane to Portland, Ore.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 12

(1) New Automobiles in initial movements, in driveway and truckway service, and (2) of Automobiles, Show Equipment and Paraphernalia, when moving with new automobiles or display automobiles.

From Portland, Oregon, and points in Oregon within two miles of Portland to points in Colorado, Idaho, Montana, Nevada, Utah, Washington and Wyoming, and to those in that part of California north of and including points in Sonoma, Napa, Solano, Sacramento, and Eldorado Counties, California.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 14

New Automobiles, in initial movements, in truckway service, and of certain advertising material and display equipment when moving with shipments of new automobiles.

From the site of the Lincoln-Mercury plant near Maywood, California to points in Idaho, Montana, Oregon, and Washington.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 15

New Automobiles, in initial movements, in driveway and truckway service, and Automobile Show Equipment and Paraphernalia, when moving with new automobiles, or display automobiles, over irregular routes.

From Portland, Ore., and points in Oregon within two miles of Portland, to points in that part of California south of Sonoma, Napa, Solano, Sacramento, and Eldorado Counties, California, with no transportation for compensation on return except as otherwise authorized.

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INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 21

Automobiles and Trucks, in secondary movements, in driveway service, over irregular routes.

From points in Idaho, Montana, Oregon (except Portland), and Washington (except Vancouver) to Seattle, Wash., with no transportation for compensation on return except as otherwise authorized.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 22

Automobiles and Trucks, in initial movements, in truckway service,

From Richmond, California to points in Idaho, Oregon, and Washington over irregular routes.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 24

Automobiles, in secondary movements, by the truckway method,

From points in North Dakota to points in Washington, Oregon, Montana, and Idaho, restricted to traffic originating in North Dakota.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 27

Trucks, Truck Chassis, and Truck-Tractors, and parts and Accessories of the described vehicles which are moving at the same time and with the vehicle of which they are a part and on which they are to be installed, in initial movements, by the driveway method,

From Portland, Oregon, to points in the United States west of a line commencing at the Gulf of Mexico and extending along the Mississippi River to the point of intersection of the eastern and southern boundaries of the State of Minnesota, thence along the eastern boundary of the State of Minnesota to the international boundary between the United States and Canada, with no transportation for compensation on return except as otherwise authorized.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 33

(1) Trailers and Semi-Trailers other than those designed to be drawn by passenger and automobiles, in initial movements in truckway service,

From Portland and St. John, Oregon to points in Washington, Idaho, Montana, and that portion of California within 150 miles of the Oregon-California state line.

(2) House Moving Trailers, in initial movement in truckway service, From Portland, Oregon to points in Washington, Idaho, Montana, Wyoming, Colorado, Utah, Nevada, and California.

(3) Luggage Trailers, designed to be drawn by passenger automobiles (a) in initial movements in truckway service,

From points in Oregon to points in Washington, Idaho and Montana and (b) in secondary movements in truckway service,

Between all points in Oregon, Idaho, California, Montana, Washington, North Dakota, Utah, Nevada, Wyoming, and Colorado.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 34

Used Automobiles in truckway service,

Between points in Oregon, on the one hand, and, on the other, points in Arizona and New Mexico, over irregular routes.

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[fol. 825]

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 34

Automobiles, Trucks, and Busses, except trailers and show paraphernalia, in initial movements, in truckaway and driveaway service.

From Milpitas, Calif., to points in California, Oregon, Washington, Idaho, Montana, Nevada, Utah, Wyoming, New Mexico, Arizona, and Colorado, with no transportation for compensation on return except as otherwise authorized.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 39

Automobiles, Trucks, Busses, and Chassis, in secondary movements, in truckaway service,

Between points in Montana and Wyoming, on the one hand, and on the other, points in South Dakota and Nebraska (except from Sioux Falls, Mitchell, Huron and Aberdeen, S. Dak., to points in Montana, and except from points in Nebraska to points in Carbon, Yellowstone, Big Horn, Treasure, Musselshell, Golden Valley, Stillwater and Rosebud Counties, Mont., and those in Park, Big Horn, Crook and Washakie Counties, Wyo.)

**RESTRICTION:** Service authorized herein is restricted against the transportation (1) of any such vehicle in the course of a continuous interline movement consisting in part of a movement in initial service from a point east of South Dakota or Nebraska, and (2) of any used automobile moving in interline service from a point in Washington, Oregon, California or Nevada to a point in any State other than Wisconsin, Minnesota, Iowa, Kansas, Oklahoma, Texas, North Dakota, Colorado, New Mexico, or the Upper Peninsula of Michigan.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 41

Wheel-type farm tractors, in equipment other than flatbed or van-type.

From Portland, Oreg., and Seattle, Wash., to points in Oregon, Idaho, Nevada, Utah, Montana, Wyoming, Colorado, and Washington (except points in Clallam, Jefferson, Kitsap and Mason Counties, Wash.), with service from Portland to points in Oregon and from Seattle to points in Washington limited to traffic having an immediately prior movement by water, with no transportation for compensation on return except as otherwise authorized.

INTERSTATE, IRREGULAR ROUTE - MC 52858 SUB 43

New Automobiles, in secondary movements, in truckaway service.

From Milpitas, Calif., to all points in California, with no transportation for compensation on return except as otherwise authorized.

[fol. 826]

INTERSTATE, IRREGULAR ROUTE, MC 52858 SUB 47

(Encompasses SUBS 48 and 49)

Automobiles, Trucks and Busses, in secondary movements by the truckaway method, between points in Colorado on the one hand and on the other, points in Arizona, Montana and Oregon.

RESTRICTION: No interline service on vehicles originating at Detroit, Michigan; Warren Township, Michigan, or Toledo, Ohio when moved in initial service to point of interchange.

RESTRICTION: No new automobiles or trucks from Colorado on or south of Highway 50 and on and east of Highway 285 to Arizona.

RESTRICTION: No tacking of authority on passenger automobiles to any existing authority prior to date of this order.

INTERSTATE, IRREGULAR ROUTE, - MC-F-6025 CONVOY COMPANY - PURCHASE - WALLACE WORTHINGTON

Boats and Equipment therefore on vehicles equipped with boat cradles. Restricted to boats more than 16 feet in length and not exceeding 22 feet in length. Between points in Oregon, Washington and Idaho.

Boats and Equipment therefore on vehicles equipped with boat cradle bodies, restricted to boats not less than 16 feet nor more than 40 feet in length, and to exclude shipments moving on government bills of lading, between points in Oregon on the one hand, and on the other, points in California.

## PROTESTANT'S EXHIBIT 115

TERMINAL STATIONS

<u>Terminals Located at</u>	<u>Description of Terminal Facilities</u>	<u>Number of Full Time Employees</u>
<u>WASHINGTON</u>		
<u>SEATTLE</u>	A. Terminal buildings consisting of office, warehouses, and repair shop.	21
	B. 170,000 square feet of fenced yard area for storing motor vehicles.	
	C. Warehouse for storing motor vehicles--capacity 80 vehicles.	
	D. 760' of private railroad spur and unloading platform.	
	---	
<u>OREGON</u>		
<u>PORTLAND</u>	A. Terminal building, consisting of offices, warehouse facilities, and repair shops.	237
	B. 214,000 square feet of fenced yard area for storing motor vehicles.	
	C. Warehouses for storing motor vehicles--capacity 600 units.	
	D. 500' of private railroad spur track and unloading platform.	
	---	
<u>CALIFORNIA</u>		
<u>LOS ANGELES</u>	A. Office facilities.	14
	B. 80,000 square feet of fenced yard area for storing motor vehicles.	
	---	
<u>SAN JOSE</u>	A. Terminal buildings, consisting of office, shop, and driver facilities	123
	B. Six acres fenced, paved yard.	
	---	
<u>MONTANA</u>		
<u>BILLINGS</u>	A. Office and repair shop facilities.	2
	B. 100,000 square feet vehicle storage space.	

[fol. 828]

Terminals  
Located atDescription of Terminal FacilitiesNumber of Full  
Time EmployeesWYCMING  
LARAMIE

A. Office and repair shop facilities

1

B. 100,000 square feet vehicle  
storage space.

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## PROTESTANT'S EXHIBIT 116

CONVOY COMPANY  
List of Equipment  
November 20, 1956

<u>Co. No.</u> <u>Co. Owned</u> <u>Equipment</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
1	1955	Fruehauf	Semi Trailer
2	1953	Ford	Tractor
3	1948	Pierce	Semi Trailer
4	1945	Ford	Tractor
5	1948	Pierce	Semi Trailer
6	1952	Ford	Tractor
7	1955	Fruehauf	Semi Trailer
8	1956	Ford	Tractor
9	1946	T. T. E.	Semi Trailer
10	1955	Ford	Truck
11	1946	Stuart	Semi Trailer
12	1946	Ford	Truck
13	1953	Acme	Trailer
14	1953	Ford	Tractor
15	1953	Thompson	Trailer
16	1953	Ford	Tractor
17	1944	American	Semi Trailer
18	1948	Ford	Truck
19	1953	Thompson	Semi Trailer
20	1954	Ford	Tractor
21	1951	T. T. E.	Semi Trailer
22	1954	Ford	Tractor
23	1953	Thompson	Semi Trailer
24	1955	Ford	Tractor
25	1953	Thompson	Semi Trailer
26	1955	Ford	Tractor
27	1953	Acme	Semi Trailer
28	1955	Ford	Tractor
29	1955	Ford	Tractor
30	1951	T. T. E.	Trailer
31	1951	Ford	Tractor
32	1948	Ford	Truck
33	1950	Westland	Semi Trailer
34	1956	Ford	Tractor
35	1951	T. T. E.	Trailer
36	1957	Ford	Tractor
37	1956	Westland	Semi Trailer
38	1946	T. T. E.	Trailer
39	1949	Foster	Semi Trailer
40	1957	Ford	Tractor
41	1951	T. T. E.	Trailer
42	1949	Ford	Tractor
43	1947	Westwin	Semi Trailer
44	1951	T. T. E.	Trailer
45	1950	Ford	Truck
46	1950	T. T. E.	Trailer



[fol. 830]

<u>Co. No.</u> <u>Co. Owned</u> <u>Equipment</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
52	1946	Ford	Truck
53	1945	Trailmobile	Semi Trailer
55	1947	Pike	Trailer
56	1951	Ford	Tractor
57	1953	Thompson	Semi Trailer
58	1950	Ford	Truck
59	1953	Acme	Semi Trailer
60	1950	Ford	Tractor
61	1947	Pike	Trailer
62	1952	Ford	Tractor
63	1955	Troyler	Semi Trailer
65A	1944	Fruehauf	Semi Trailer
67A	1944	Fruehauf	Semi Trailer
69A	1944	Fruehauf	Semi Trailer
70	1951	Ford	Truck
71	1944	Fruehauf	Semi Trailer
73	1953	Acme	Semi Trailer
75	1947	Mech. Handling	Semi Trailer
77	1953	Acme	Semi Trailer
79	1947	Utility	Semi Trailer
81	1949	T. T. E.	Trailer
82	1948	Ford	Truck
83	1953	Thompson	Semi Trailer
84	1948	Ford	Truck
85	1956	Westland	Semi Trailer
87	1956	Westland	Semi Trailer
88	1948	Ford	Truck
89	1948	Pacific	Semi Trailer
91	1953	Acme	Semi Trailer
93	1953	Thompson	Semi Trailer
95	1947	Pike	Trailer
97	1953	Thompson	Semi Trailer
99	1953	Thompson	Semi Trailer
101	1953	Thompson	Semi Trailer
102	1950	Ford	Truck
103	1950	Durobilt	Trailer
104	1950	Ford	Tractor
105	1950	Westland	Trailer
106	1950	Ford	Truck
107	1950	Westland	Trailer
109	1950	Westland	Trailer
110	1950	Ford	Tractor
111	1950	Westland	Trailer
113	1951	Westland	Trailer
114	1950	Ford	Truck
115	1951	Westland	Trailer
116	1950	Ford	Truck
117	1951	T. T. E.	Trailer
118	1950	Ford	Truck
119	1951	T. T. E.	Trailer
121	1953	Westland	Semi Trailer
122	1951	Ford	Truck
123	1950	MHS	Semi Trailer
124	1948	Ford	Truck
125	1953	Durobilt	Trailer

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[fol. 831]

<u>Co. No.</u> <u>Co. Owned</u> <u>Equipment</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
127	1953	Durobilt	Semi Trailer
128	1953	Westland	Truck
129	1953	Durobilt	Semi Trailer
130	1945	Kenworth	Tractor
131	1945	Wentwin	Semi Trailer
132	1945	Kenworth	Tractor
133	1940	Pointer-Will.	Semi Trailer
135	1953	Durobilt	Semi Trailer
137	1946	Beall	Semi Trailer
139	1956	Westland	Semi Trailer
141	1947	Fruehauf	Semi Trailer
143	1954	Westland	Trailer
145	1948	Pierce	Semi Trailer
147	1954	Durobilt	Trailer
149	1946	MHS	Semi Trailer
151	1947	MHS	Semi Trailer
153	1950	MHS	Semi Trailer
155	1950	MHS	Semi Trailer
157	1950	MHS	Semi Trailer
159	1950	MHS	Semi Trailer
161	1946	Francis	Semi Trailer
163	1947	Francis	Semi Trailer
165	1947	Francis	Semi Trailer
167	1947	Francis	Semi Trailer
169	1946	Francis	Semi Trailer
171	1947	Francis	Semi Trailer
173	1947	Francis	Semi Trailer
175	1950	Delavan	Semi Trailer
177	1948	Dunn	Semi Trailer
179	1952	Maple Leaf	Semi Trailer
181	1952	Maple Leaf	Semi Trailer
183	1952	Maple Leaf	Semi Trailer
185	1952	Maple Leaf	Semi Trailer
187	1953	Maple Leaf	Semi Trailer
189	1952	Maple Leaf	Semi Trailer
191	1952	Maple Leaf	Semi Trailer
193	1953	Maple Leaf	Semi Trailer
195	1952	Maple Leaf	Semi Trailer
197	1951	Maple Leaf	Semi Trailer
199	1950	Delavan	Semi Trailer

Exclusive, Full-time Leased Equipment

200	1956	Ford	Tractor
204	1956	International	Tractor
206	1953	Ford	Tractor
214	1955	Ford	Tractor
220	1956	Ford	Tractor
222	1945	Kenworth	Tractor
224	1955	Ford	Tractor
226	1956	Ford	Tractor
228	1952	Ford	Tractor
230	1956	Ford	Tractor
232	1953	Ford	Tractor
234	1953	Ford	Tractor

[fol. 832]

<u>Co. No.</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
<u>Exclusive, Full-time Leased Equipment</u>			
236	1952	Ford	Tractor
238	1955	Ford	Tractor
240	1953	Ford	Tractor
242	1956	Dodge	Tractor
246	1956	Ford	Tractor
248	1956	Ford	Tractor
250	1956	Dodge	Tractor
252	1956	Ford	Tractor
258	1952	G. M. C.	Tractor
260	1956	G. M. C.	Tractor
268	1949	International	Tractor
270	1956	International	Tractor
274	1956	International	Tractor
276	1953	Ford	Tractor
280	1956	Ford	Tractor
282	1956	International	Tractor
284	1955	Ford	Tractor
286	1956	G. M. C.	Tractor
298	1956	Ford	Tractor
300	1952	Ford	Tractor
302	1952	Ford	Tractor
304	1952	Ford	Tractor
306	1953	Ford	Tractor
308	1951	Ford	Tractor
309	1946	Wentwin	Semi Trailer
310	1953	Ford	Tractor
312	1953	Ford	Tractor
314	1953	Ford	Tractor
316	1953	Ford	Tractor
318	1953	Ford	Tractor
320	1954	Ford	Tractor
322	1953	Ford	Tractor
324	1953	Ford	Tractor
326	1953	Ford	Tractor
328	1953	Ford	Tractor
330	1954	Ford	Tractor
332	1954	Ford	Tractor
334	1955	Ford	Tractor
336	1955	Ford	Truck
338	1955	Ford	Truck
340	1955	Ford	Truck
342	1955	Ford	Truck
344	1955	Ford	Truck
346	1955	Ford	Truck
348	1955	Ford	Truck
350	1955	Ford	Truck
352	1955	Ford	Truck
354	1955	Ford	Truck
356	1955	Ford	Truck
358	1955	Ford	Tractor
360	1955	Ford	Tractor
362	1955	Ford	Tractor
364	1955	Ford	Tractor
366	1955	Ford	Tractor
368	1955	Ford	Tractor

[fol. 833]

<u>Co. No.</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
<u>Exclusive, Full time Leased Equipment</u>			
370	1955	Ford	Tractor
372	1955	Ford	Tractor
374	1955	Ford	Tractor
376	1955	Ford	Tractor
378	1955	Ford	Tractor
380	1955	Ford	Tractor
382	1955	Ford	Tractor
384	1955	Ford	Tractor
386	1955	Ford	Tractor
388	1956	Ford	Tractor
390	1956	Ford	Tractor
392	1956	Ford	Tractor
394	1956	Ford	Tractor
396	1956	Ford	Tractor
398	1956	Ford	Tractor

Company Owned Equipment

400	1949	Ford	Truck
401	1948	ORPCO	Semi Trailer
402	1956	Ford	Tractor
403	1946	ORPCO	Semi Trailer
405	1946	ORPCO	Semi Trailer
407	1946	ORPCO	Semi Trailer
409	1950	ORPCO	Semi Trailer
411	1946	ORPCO	Semi Trailer
413	1945	ORPCO	Semi Trailer
416	1948	Ford	Tractor
417	1947	Pike	Semi Trailer
419	1955	Westland	Semi Trailer
423	1953	Durobilt	Semi Trailer
425	1955	Westland	Semi Trailer
426	1954	Ford	Tractor
427	1955	Westland	Semi Trailer
428	1954	Ford	Tractor
429	1955	Fruehauf	Semi Trailer
431	1955	Fruehauf	Semi Trailer
433	1955	Fruehauf	Semi Trailer
434	1955	Ford	Tractor
435	1955	Westland	Semi Trailer
436	1955	Ford	Tractor
437	1955	Stuart	Trailer (Conv)
438	1955	Ford	Tractor
439	1955	Stuart	Trailer (Conv)
440	1955	Ford	Tractor
441	1955	Stuart	Trailer (Conv)
442	1955	Ford	Tractor
443	1955	Stuart	Trailer (Conv)
444	1955	Ford	Tractor
445	1955	Stuart	Trailer (Conv)
446	1955	Ford	Tractor
447	1955	Stuart	Trailer (Conv)
448	1955	Ford	Truck
449	1955	Stuart	Trailer (Conv)
450	1955	Ford	Truck

[fol. 834]

Co. No.  
Co. Owned  
EquipmentYearMakeDescription

451	1955	Stuart	Trailer (Conv)
452	1955	Ford	Truck
453	1955	Stuart	Trailer (Conv)
454	1955	Ford	Truck
455	1955	Stuart	Trailer (Conv)
456	1955	Ford	Tractor
457	1955	Stuart	Trailer (Conv)
459	1955	Fruehauf	Semi Trailer
461	1955	Fruehauf	Semi Trailer
463	1955	Fruehauf	Semi Trailer
465	1955	Fruehauf	Semi Trailer
467	1955	Fruehauf	Semi Trailer
469	1955	Fruehauf	Semi Trailer
471	1955	Westland	Semi Trailer
473	1955	Westland	Semi Trailer
475	1955	Westland	Semi Trailer
477	1955	Westland	Semi Trailer
479	1955	Westland	Semi Trailer
481	1955	Westland	Semi Trailer
483	1955	Westland	Semi Trailer
485	1955	Westland	Semi Trailer
487	1955	Westland	Semi Trailer
489	1955	Westland	Semi Trailer
491	1955	Westland	Semi Trailer
493	1955	Westland	Semi Trailer
495	1955	Westland	Semi Trailer
497	1955	Westland	Semi Trailer
499	1955	Westland	Semi Trailer
501	1950	Delavan	Semi Trailer
503	1950	Delavan	Semi Trailer
505	1950	Delavan	Semi Trailer
507	1950	Delavan	Semi Trailer
509	1951	Eansgr	Semi Trailer
511	1951	Eansor	Semi Trailer
513	1951	Eansor	Semi Trailer
515	1950	Durobilt	Semi Trailer
517	1951	Lande	Semi Trailer
519	1948	ORPCO	Semi Trailer
521	1946	MHS	Semi Trailer
523	1953	Hayes	Semi Trailer
525	1953	Hayes	Semi Trailer
527	1953	Hayes	Semi Trailer
529	1953	Hayes	Semi Trailer
531	1946	MHS	Semi Trailer
533	1946	MHS	Semi Trailer
535	1946	MHS	Semi Trailer
537	1946	MHS	Semi Trailer
539	1946	MHS	Semi Trailer
541	1946	MHS	Semi Trailer
543	1946	MHS	Semi Trailer
545	1946	MHS	Semi Trailer
547	1946	MHS	Semi Trailer
549	1946	MHS	Semi Trailer
551	1948	ORPCO	Semi Trailer
553	1953	Hayes	Semi Trailer

834



[fol. 835]

<u>Co. No.</u> <u>Co. Owned</u> <u>Equipment</u>	<u>Year</u>	<u>Make</u>	<u>Description</u>
555	1953	Hayes	Semi Trailer
557	1953	Hayes	Semi Trailer
559	1953	Hayes	Semi Trailer
561	1947	Francis	Semi Trailer
565	1947	Pike	Semi Trailer

Exclusive, Full-time Leased Equipment

600	1955	Chevrolet	Tractor
601	1946	W & K	Semi Trailer
602	1956	Ford	Tractor
603	1947	W & K	Semi Trailer
606	1955	G. M. C.	Tractor
610	1955	Ford	Tractor
611	1946	W & K	Semi Trailer
634	1952	Dodge	Tractor
635	1946	M. H. S.	Semi Trailer
636	1956	Ford	Tractor
638	1953	Ford	Tractor
640	1955	Ford	Tractor
642	1951	Ford	Tractor
646	1955	Dodge	Tractor
648	1955	Ford	Tractor
650	1955	International	Tractor
652	1953	Ford	Tractor
654	1956	Ford	Tractor
658	1953	G. M. C.	Tractor
664	1955	Ford	Tractor
668	1955	Ford	Tractor
672	1952	International	Tractor
676	1956	Dodge	Tractor
678	1953	G. M. C.	Tractor
690	1956	Ford	Tractor
694	1955	Ford	Tractor
696	1956	Ford	Tractor
698	1956	Ford	Tractor
700	1956	Ford	Tractor
702	1956	Ford	Tractor
704	1956	Ford	Tractor
706	1956	Ford	Tractor
708	1956	Ford	Tractor
710	1956	Ford	Tractor
712	1956	Ford	Tractor
714	1956	Ford	Tractor
716	1956	Ford	Tractor
718	1956	Ford	Tractor
720	1956	Ford	Tractor
722	1956	Ford	Tractor
724	1956	Ford	Tractor
726	1956	Ford	Tractor
728	1953	Dodge	Tractor
729	1943	Acme	Semi Trailer

[fol. 836]

Co. No.  
Co. Owned  
Equipment

	<u>Year</u>	<u>Make</u>	<u>Description</u>
801	1955	Westland	Semi Trailer
803	1955	Westland	Semi Trailer
805	1955	Westland	Semi Trailer
807	1955	Westland	Semi Trailer
809	1955	Westland	Semi Trailer
811	1955	Westland	Semi Trailer
813	1955	Westland	Semi Trailer
815	1955	Westland	Semi Trailer
817	1955	Westland	Semi Trailer
819	1955	Westland	Semi Trailer
821	1955	Westland	Semi Trailer
823	1955	Westland	Semi Trailer
825	1955	Westland	Semi Trailer
827	1955	Westland	Semi Trailer
829	1955	Westland	Semi Trailer
831	1956	Westland	Semi Trailer
833	1956	Westland	Semi Trailer
835	1956	Westland	Semi Trailer
837	1956	Westland	Semi Trailer
1500	1956	Ford	Sedan
1501	1950	Universal	House Trailer
1502	1946	Ford	Wrecker
1503	1948	Pacific Liner	House Trailer
1504	1944	Clarktor	Mule
1508	1957	Ford	Sedan
1510	1956	Ford	Sedan
1512	1955	Ford	Sedan
1514	1941	Baker	Crane
1516	1943	Ford	Wrecker
1518	1950	Willys	Jeep
1520	1941	Baker	Crane
1522	1954	Ford	Pickup
1524	1947	Studebaker	Pickup
1528	1949	International	Pickup
1532	1949	Harley Davidson	Cycle
1534	1950	Ford	Pickup
1540	1946	Ford	Wrecker
1542	1946	Ford	Wrecker
1544	1938	G. M. C.	Crane Truck
1562	1955	International	Pickup
1566	1955	Ford	Pickup
1568	1955	Ford	Pickup
1570	1949	Ford	Pickup
1574	1956	Ford	Sedan
1576	1948	Clarktor	Mule
1578	1950	Ford	Wrecker
1582	1956	Ford	Sedan
1584	1956	Nash	Station Wagon
1586	1956	Ford	Ranch Wagon
1588	1956	Ford	Pickup

836

630

[fol. 837]

**SUMMARY OF EQUIPMENT:**

181 Revenue Trucks and Tractors

203 Revenue Trailers and Semi Trailers

31 Service Cars and Trucks

837

[fol. 838]

## PROTESTANT'S EXHIBIT 117

CONVOY COMPANY  
3900 N. W. Yeon Avenue  
Portland, Oregon

## SAFETY PROGRAM

The safety program outlined below is actively pursued and continually stressed to the end of steadily improving our safety record, first, for the protection of the public and our own employees and, second, in the interests of economical operation.

## SELECTION OF DRIVERS

- I. Interview to ascertain basic qualifications
  - A. Previous employment experience
  - B. General intelligence and educational background
  - C. Personality and character
  - D. Physical fitness
- II. Road test of driving ability and judgment
- III. Company designed driver's application form
- IV. Investigation
  - A. Previous Employers
    1. Brief telephone check following mimeograph outline
    2. Inquiry form mailed to three previous employers
  - B. Credit check
- V. Mental ability and general knowledge tests, Porto Clinic test
- VI. Physical examination
- VII. Final interview

## TRAINING OF PROSPECTIVE DRIVERS (3-day course)

- I. Indoctrination school
  - A. Presentation and review:
    1. "Welcome to Convoy" (resume of history and aims)
    2. "ICC Motor Carrier Safety Regulations"
    3. Convoy Company's "Driver Manual"
  - B. Care and handling of equipment
  - C. Proper use of emergency equipment
  - D. Instructions for reporting of accidents
  - E. Explanation of all forms—sign in sheets, freight bills, trip reports, bills of lading, equipment reports, ICC logs, etc.
  - F. Explanation of Company Incentive Program
- [fol. 839]
- II. Supervised practice by students in loading, tying down, and unloading
- III. Written examination
- IV. Two student trips by each man with qualified driver, with "Report on Student Driver" sheet to be filled in.

## SUPERVISION OF DRIVERS

- I. Safety Department: Full time Driver and Safety Supervisor, assisted by Driver Trainer
- II. Supervision checks and aids
  - A. Sign in and out sheets supervised by Dispatchers
  - B. Schedules assigned and controlled by Dispatchers
  - C. Truck Insurance and Motor Transport Safety Service road patrols



## II. Supervision checks and aids (cont.)

- D. Convoy Company Driver Trainer Observation Reports
- E. National Automobile Transporters Safety Service
- F. Corrective interviews with drivers
- G. Disciplinary action for violations of company, local, state and/or federal regulations
- H. Auditing of trip sheets and correlation with drivers' daily logs and recording devices (speedograph charts)

## SAFETY MEETINGS

- I. Periodic driver conferences for further instruction and review of safety practices, accident record, and improvements in company procedures
- II. Annual Safety and Service Pin Award Dinner

## INCENTIVE PROGRAM

- I. National Safety Council Safe Driver awards
- II. Company (years of service) awards
- III. Company safe driving bonus point awards (ATA "Sights on Safety" program)
- IV. Inter-terminal competition based on individual terminal accident frequency

## ACCIDENT INVESTIGATION

- I. Scheduled meetings by Accident Review Board to determine responsibility in each accident
- II. Accident register to determine causes, types, locations, frequencies, and preventive measures necessary

## COMMUNICATIONS

- I. Driver bulletins and posters
  - A. Company
  - B. National Automobile Transporters Association
  - C. National Safety Council
  - [fol. 840] D. American Trucking Associations, Inc.
  - E. Insurance company
  - F. "Sights on Safety" incentive program
- II. Monthly letters, with little gift enclosures, to drivers' wives
- III. Monthly "Convoyer" (combination company news-letter and instruction paper)
- IV. Shop "Mechanical Tips" (company shop bulletin with suggestions for more efficient equipment handling)

## IN-TRAINING

- I. Close supervision and retraining of all drivers with low performance records
- II. Strict supervision on adherence to all ICC regulations, approved road and safety practices
- III. Stress on promotion of good customer relations

## OTHER ACTIVITIES

- I. Participation of supervisory personnel in Motor Vehicle Fleet Courses
- II. Participation in National Association of Fleet Supervisors organization
- III. Constant promotion of better company-employee relationship through periodic letters, extra safety bonus points, employee suggestion prizes, etc.

## PROTESTANT'S EXHIBIT 118

CONVOY COMPANY  
BALANCE SHEET

as at December 31, 1956

## ASSETS

## CURRENT ASSETS

Cash		\$ 180,909.00
Miscellaneous Special Deposits		4,097.50
Accounts Receivable		338,676.04
Prepayments		47,923.04
Materials and Supplies		2,973.40
Cash Reserves-Investments		73,300.00
		<u>\$ 546,907.99</u>

## TANGIBLE PROPERTY

Trucks, Trailers, Cars	\$ 725,182.31	
Shop and Office Equip. & Fix.	64,363.56	
Improvements to Leasehold Prop.	196,426.64	
	<u>\$ 985,972.51</u>	
Less Reserves for Depreciation	625,167.71	\$ 360,774.80

## DEFERRED DEBITS

3,500.00

## INVESTMENTS

67,500.00  
\$ 1,081,742.79

## LIABILITIES

## CURRENT LIABILITIES

Payroll Payable	\$ 74,346.67	
Interline & Lease Truck Balances	43,076.57	
Vouchers	338,407.29	
Payroll Tax Deductions	30,709.17	
Transportation Tax	11,195.32	\$ 497,735.02

## ACCRUED TAXES

Payroll	\$ 6,553.10	
Real Estate & Personal Prop Tax	2,034.40	8,587.50

## OTHER CURRENT LIABILITIES

3,659.97  
\$ 509,982.49

## ADVANCES PAYABLE

Affiliated Companies	\$ 52,500.00	
Building Loan	39,926.23	\$ 92,426.23

## EQUIPMENT OBLIGATIONS

\$ 94,375.12

## C. T. CO. CONTRACT

31,874.96

## STATE AND FEDERAL INCOME TAX RESERVE

64,006.95

## CAPITAL STOCK

22,500.00

## SURPLUS CONTROL

256,577.04\$ 1,081,742.79 541

## PROTESTANT'S EXHIBIT 119

CONVY COMPANY  
 Portland, Oregon  
 Profit and Loss Statement  
 For Twelve Months Ending December 31, 1956

## OPERATING REVENUES

\$ 5,121,615.42

## EXPENSES

Equipment Maintenance

480,412.25

Transportation Expense

3,328,671.23

Terminal Expense

248,002.30

Traffic Expense

90,501.39

Insurance and Safety Expense

228,513.44

Administrative and General Expense

232,848.57

Depreciation Expense

137,160.22

Operating Taxes and Licenses

328,658.92

## TOTAL OPERATING EXPENSES

\$ 5,074,768.32

## NET OPERATING REVENUE

46,847.10

## DEDUCTIONS FROM ORDINARY INCOME

3,024.35

## NET ORDINARY INCOME BEFORE TAXES

\$ 43,822.75

## EXTRAORDINARY INCOME

59,164.56

## NET INCOME BEFORE TAXES

\$ 102,987.31

842

[fol. 843].

## PROTESTANT'S EXHIBIT 121

DAVID T. HAMILTON AND JAMES D. BOER, A PARTNERSHIP,  
DOING BUSINESS AS B & H TRUCKAWAY COMPANY,  
MAYWOOD, CALIFORNIA

PERMIT NO. MC-107230

At a Session of the INTERSTATE COMMERCE COMMISSION,  
Division 5, held at its office in Washington, D. C. on  
the 18th day of October, A. D. 1948

IT IS ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

*Automobiles*, in truckaway and driveaway service, in initial movements, over irregular routes,

From Vernon, Calif., to all points and places in Arizona, Nevada, and in the Los Angeles Harbor, Calif., commercial zone as defined in *Los Angeles, Calif., Commercial Zone*, 3 M. C. C. 248, with no transportation for compensation on return except as otherwise authorized.

*Automobiles*, in truckaway and driveaway service, in secondary movements, over irregular routes,

Between points and places in Fresno, Madera, Mono, Kings, Tulare, and Inyo Counties, Calif., and points and places in California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, Calif., on the one hand, and, on the other, points and places in Arizona and Nevada.

PERMIT NO. MC-107230-Sub. 4

At a Session of the INTERSTATE COMMERCE COMMISSION  
Division 5, held at its office in Washington, D. C., on  
the 12th day of June, A. D., 1951

IT IS ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:



*Motor vehicles, except trailers, in initial movements, by truckaway service, over irregular routes. From Vernon, Calif., and the site of the Willys Overland Motors Corporation plant near Maywood, Calif., to points in Utah, Idaho, Oregon, and Washington, and those in Teton, Sublette, Sweetwater, Uinta, and Lincoln Counties, Wyo., with no transportation for compensation on return except as otherwise authorized.*

## APPLICANT'S EXHIBIT 123

RAIL SHIPMENTS BY SOUTHERN PACIFIC COMPANY  
OF AUTOMOBILES FROM SOUTH GATE (LOS ANGELES)  
CALIFORNIA FOR GENERAL MOTORS CORPORATION TO  
DISTRIBUTORS NOT SERVED BY SOUTHERN PACIFIC  
COMPANY

---

YEAR 1955

As detailed on attached sheets  
numbered 1 to 3, inclusive:

Number of units .....	20 146
Southern Pacific Company revenue .....	\$ 740 813
Revenue accruing to other roads .....	\$ 511 860

JANUARY 1ST TO JUNE 30, 1956

As detailed

on attached sheets numbered 1 and 2:

Number of units .....	9 688
Southern Pacific revenue .....	\$ 886 609
Revenue accruing to other roads .....	\$ 248 595

## SOUTHERN PACIFIC COMPANY

Sheet 1 of  
3 sheets

AUTOS TRANSPORTED BY RAIL FROM SOUTH GATE (LOS ANGELES) CALIFORNIA

YEAR 1925

Destination		Number of Rafts	CHARGES	S.P.Co. Revenue	Revenue of Other Roads
Ajo,	Aris.	6	\$394 24	\$295 68	\$78 56
Bonanza Ferry,	Ida.	17	2 620 48	1 939 16	681 32
Coeur d'Alene,	"	114	15 105 17	11 177 83	3 927 34
Craneville,	"	31	4 456 12	2 868 85	1 587 27
Holling Wardner,	"	41	6 136 74	4 541 19	1 595 55
Leviston,	"	246	32 547 04	21 194 64	11 352 40
Madison,	"	89	11 639 34	8 613 11	3 026 23
Potlatch,	"	3	385 31	285 13	100 18
Preston,	"	3	309 04	36 52	272 52
Sandpoint,	"	41	6 293 17	4 656 95	1 636 22
Wallace,	"	6	934 94	691 86	243 08
Weiser,	"	7	868 71	80 47	788 24
Bozeman,	Wt.	12	2 551 90	1 378 03	1 173 87
Conrad,	"	6	1 180 42	661 04	519 38
Cut Bank,	"	8	1 608 41	965 05	643 36
Deer Lodge,	"	10	1 945 29	1 167 17	778 12
Great Falls,	"	106	20 674 99	11 577 99	9 097 00
Hamilton,	"	15	3 311 77	1 986 70	1 324 47
Helena,	"	132	25 651 04	15 390 62	10 260 42
Kalispell,	"	26	12 274 23	7 364 54	4 909 69
Missoula,	"	44	8 459 99	5 498 86	2 960 93
Shelby,	"	4	780 18	436 90	343 28
Astoria,	Ore.	136	14 329 09	11 463 27	2 865 82
Baker,	"	79	10 202 38	7 549 76	2 652 62
Bend,	"	15	1 372 36	1 015 55	356 81
Burns,	"	30	4 528 95	3 351 42	1 177 53
Clatskanie,	"	10	1 003 42	802 74	200 68
Condon,	"	6	612 13	452 98	159 15
Enterprise,	"	13	1 737 05	1 285 42	451 63
Freewater,	"	38	4 477 60	3 314 90	1 164 70
Gresham,	"	111	11 715 73	10 427 00	1 288 73
Herniston,	"	46	4 738 67	3 500 70	1 239 97
Hoppper,	"	14	1 480 09	1 095 27	384 82
Hood River,	"	32	3 082 07	2 228 93	783 14
LaGrande,	"	69	8 005 43	5 924 02	2 081 41
Madras,	"	18	1 618 11	1 256 60	441 51
Oregon City,	"	483	46 056 43	40 990 22	5 066 21
Pendleton,	"	195	21 435 02	19 861 91	5 573 11
Portland,	"	1 088	101 394 69	90 241 27	11 153 42
Prineville,	"	65	56 770 09	5 009 87	1 760 22
Redmond,	"	19	1 707 63	1 263 65	443 98
St. Helens,	"	36	3 642 73	2 384 18	1 258 55
Seaside,	"	54	5 469 45	4 375 56	1 093 89
Souasa,	"	14	1 965 37	1 454 37	511 00
The Dalles,	"	222	21 269 58	15 739 48	5 530 09
Aberdeen,	Wa.	205	21 683 48	17 346 78	4 336 70
Anacortes,	"	90	10 624 15	7 968 11	2 656 04

[fol. 846]

## SOUTHERN PACIFIC COMPANY

Sheet 3 of  
3 sheets

## AUTOS TRANSPORTED BY RAIL FROM SOUTH GATE (LOS ANGELES) CALIFORNIA

YEAR 1922 (Cont'd.)

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Arlington, Wa.	38	\$3 909 85	\$2 932 39	\$977 46
Auburn, "	382	40 252 02	32 201 62	8 050 40
Belleview, "	296	34 596 91	25 947 68	8 649 23
Bellingham, "	180	21 056 90	15 792 68	5 264 22
Benton, "	4	418 36	369 59	108 77
Bromerton, "	258	27 062 65	20 296 99	6 765 66
Camas, "	47	4 458 80	3 299 51	1 159 29
Centralia, "	91	8 490 94	6 792 75	1 698 19
Chenahia, "	93	9 783 50	7 826 80	1 956 70
Chelan, "	4	456 01	337 45	118 56
Chewelah, "	4	552 50	408 85	143 65
Cle-Elum, "	4	398 18	294 65	103 53
Colfax, "	81	10 846 98	8 026 77	2 820 21
Colville, "	37	5 588 15	3 911 71	1 676 44
Coulee City, Wa.	4	514 14	380 46	133 68
Davenport, "	11	1 388 32	1 027 36	360 96
Dorton, "	12	1 384 78	1 024 74	360 04
Ellensburg, "	59	6 016 16	4 451 96	1 564 20
Emmelfaw, "	251	26 620 26	21 296 81	5 324 05
Ephrata, "	14	1 647 87	1 219 42	428 45
Everett, "	384	41 045 05	30 783 79	10 261 26
Grandview, "	48	4 824 21	3 569 92	1 254 29
Kelso, "	15	1 509 45	1 207 56	301 89
Kent, "	73	7 719 28	6 175 42	1 543 86
Kirkland, "	396	42 212 29	31 659 22	10 553 07
Longview, "	286	30 365 09	22 292 07	6 073 02
Lynden, "	70	27 991 65	22 393 32	5 598 33
Montesano, "	34	3 506 76	2 805 41	701 35
Moses Lake, "	161	21 175 87	13 383 15	7 792 72
Mt. Vernon, "	181	19 250 39	14 437 79	4 812 60
Morton, "	4	428 32	282 69	145 63
Newport, "	22	3 091 40	2 287 64	803 76
North Bend, "	73	7 834 60	5 875 95	1 958 65
Olympia, "	200	21 029 25	16 823 40	4 205 85
Onak, "	58	7 547 56	5 283 29	2 264 27
Pasco, "	273	28 800 14	21 312 10	7 488 04
Pomeroy, "	3	379 53	280 85	98 68
Port Angeles, "	11	1 167 86	705 60	462 26
Prosser, "	52	5 637 57	4 171 80	1 465 77
Pullman, "	27	3 691 74	2 731 89	959 85
Puyallup, "	169	17 840 07	14 272 06	3 568 01
Raymond, "	74	7 917 43	6 333 94	1 583 49
Renton, "	270	28 213 35	21 160 01	7 053 34
Ritzville, "	36	4 430 88	3 278 85	1 152 03
Satsop, "	26	2 805 33	2 244 26	561 07
Seattle, "	6 446	678 949 83	543 159 86	135 789 97
Sedro-Walley, "	58	5 780 28	4 335 21	1 445 07
Shelton, "	21	2 147 55	1 718 04	429 51

Sheet 3 of 3 sheets

## SOUTHERN PACIFIC COMPANY

PASSENGERS TRANSPORTED BY RAIL FROM SOUTH GATE (LOS ANGELES) CALIFORNIA

YEAR 1921 (Cont'd.)

Destination	No.	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Buckwalsh,	34	83	326 28	\$2 494 71	\$431 57
Spokane,	2 225	289	219 85	214 022 68	75 197 17
Sanjudo,	71	7	485 40	5 339 20	1 944 30
Tacoma,	846	88	758 73	71 006 98	17 751 75
Topeka,	20	2	194 40	1 623 86	570 54
Toppenish,	853	81	562 52	65 250 02	16 312 90
Vancouver,	172	19	348 51	14 317 90	5 030 61
Walla Walla,	8		797 75	590 34	207 41
Wapato,	164	18	660 64	13 808 87	4 851 77
Wenatchee,	4		507 61	375 63	131 98
Wilbur,	353	37	021 76	27 396 10	9 623 66
Yakima,	30 142	82	252 672 87	81 740 813 22	\$511 859 68

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## SOUTHERN PACIFIC COMPANY

Sheet 1 of  
2 sheets

## AUTOS TRANSPORTED BY RAIL FROM SOUTH GATE (LOS ANGELES) CALIFORNIA

SIX MONTHS ENDED JUNE 30, 1926

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Ajo,	8	\$509 89	\$382 42	\$127 47
Bonners Ferry,	4	554 63	410 43	144 20
Coeur d'Alene,	67	9 412 90	6 965 34	2 447 36
Orangeville,	19	2 807 78	1 807 66	1 000 12
Leviston,	134	18 865 50	12 285 22	6 580 28
Moscow,	41	5 657 56	4 186 60	1 470 96
Sand Point,	21	3 418 95	2 530 02	888 93
Wallace,	10	1 659 32	1 227 90	431 42
Cut Bank,	4	807 91	484 75	323 16
Great Falls,	4	810 18	453 70	356 48
Helena,	8	1 632 96	979 78	653 18
Missoula,	6	1 206 78	784 41	422 37
Aspatria,	76	8 117 30	6 493 84	1 623 46
Baker,	69	9 327 54	6 902 38	2 425 16
Black Rock Jet.	4	472 25	349 47	122 78
Burns,	3	337 39	249 67	87 72
Condon,	3	334 23	247 33	86 90
Enterprise,	15	2 071 83	1 533 15	538 68
Oresham,	235	25 859 45	23 014 91	2 844 54
Hepburn,	16	1 688 56	1 249 54	439 02
Hermiston,	22	2 239 57	1 657 28	582 29
Hood River,	33	3 299 13	2 441 36	857 77
La Grande,	40	12 779 12	9 456 55	3 322 57
Madera,	4	402 28	297 69	104 59
Milton Freewater,	34	4 041 78	2 990 92	1 050 86
Oregon City,	252	25 102 31	22 341 06	2 761 25
Pendleton,	104	11 961 40	8 851 43	3 109 97
Prineville,	35	3 910 43	2 893 72	1 016 71
Portland,	705	69 584 40	61 930 17	7 654 29
Prineville,	11	1 157 9	856 88	301 07
Redmond,	4	378 65	280 20	98 45
Seaside,	14	1 409 38	1 127 51	281 87
Seneca,	4	432 84	320 30	112 54
St. Helens,	18	1 928 29	1 542 64	385 65
The Dalles,	108	10 814 64	8 002 83	2 811 81
Aberdeen,	132	14 588 24	11 670 59	2 917 65
Anacortes,	36	4 344 03	3 258 02	1 086 01
Arlington,	22	2 442 89	1 832 17	610 72
Auburn,	158	17 256 43	13 805 15	3 451 28
Bellevue,	95	10 459 92	7 844 94	2 614 98
Bellingham,	106	13 000 83	9 750 62	3 250 21
Bremerton,	78	8 452 76	6 339 57	2 113 19
Camas,	19	1 919 70	1 420 57	499 13
Centralia,	112	12 202 19	9 761 75	2 440 44
Colefax,	30	4 138 35	3 062 38	1 075 97
Columbia,	23	3 718 90	2 603 23	1 115 67
Coulee City,	3	432 59	320 12	112 47
Davenport,	4	526 75	389 80	136 95

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## SOUTHERN PACIFIC COMPANY

AUTOS TRANSPORTED BY RAIL FROM SOUTH GATE (LOS ANGELES) CALIFORNIA

SIX MONTHS ENDED JUNE 30, 1926 (Cont'd.)

Destination	No.	Number of Waits	Charges	S.P.Co. Revenue	Revenue of Other Roads
Ellensburg,	Wn.	35	\$3 716 53	\$2 750 24	\$966 29
Emmelen,	"	183	20 184 56	16 147 65	4 036 91
Ephrata,	"	26	3 379 04	2 500 49	878 55
Everett,	"	168	18 922 51	14 191 89	4 730 62
Grandview,	"	18	1 879 54	1 390 86	488 68
Kelso,	"	14	1 466 40	1 173 12	293 28
Kent,	"	27	3 004 49	2 403 59	600 90
Kirkland,	"	148	22 473 22	16 854 91	5 618 31
Longview,	"	171	18 850 56	15 080 45	3 770 11
Lynden,	"	37	4 703 70	3 010 37	1 693 33
Montesano,	"	11	1 131 01	904 81	226 20
Moses Lake,	"	90	12 355 21	7 808 49	4 546 72
Mt. Vernon,	"	108	11 812 89	8 839 66	2 973 23
Newport,	"	10	1 414 72	1 046 89	367 83
North Bend,	"	92	10 257 22	7 692 92	2 564 30
Okanogan,	"	3	331 39	231 97	99 42
Olympia,	"	114	12 308 59	9 846 87	2 461 72
Pasco,	"	131	14 669 21	10 855 19	3 814 02
Port Angeles,	"	3	286 25	176 58	109 67
Prosser,	"	54	6 020 95	4 455 50	1 565 45
Pullman,	"	26	3 601 32	2 664 98	936 34
Puyallup,	"	108	29 252 70	23 402 16	5 850 54
Raymond,	"	17	1 868 93	1 495 15	373 78
Renton,	"	200	21 864 65	16 398 49	5 466 16
Ritzville,	"	11	1 430 12	1 058 29	371 83
Satsop,	"	42	4 625 23	3 700 18	925 05
Seattle,	"	2 742	306 279 45	245 023 56	61 255 89
Sedro-Wolley,	"	46	4 445 86	3 334 40	1 111 46
Shelton,	"	81	4 463 76	3 571 01	892 75
Snohomish,	"	23	2 451 57	1 838 68	612 89
Spokane,	"	971	132 478 28	98 033 92	34 444 36
Sunnyside,	"	37	4 037 11	2 987 46	1 049 65
Tacoma,	"	323	35 130 79	28 104 63	7 026 16
Toppenish,	"	23	2 534 42	1 875 47	658 95
Vancouver,	"	346	34 350 40	27 480 32	6 870 08
Walla Walla,	"	101	11 905 09	8 809 77	3 095 32
Wenatchee,	"	91	10 679 10	7 902 53	2 776 57
Yakima,	"	146	16 156 60	11 987 36	4 201 24
Total		9 688	\$1 135 204 09	\$886 608 98	\$248 595 11

YEAR 1955 As detailed on attached sheets  
numbered 1 and 2:

JANUARY 1ST TO JUNE 30, 1956 As detailed  
on attached sheets numbered 1 and 2:

Number of units .....	5 771
Southern Pacific Company revenue .....	\$ 63 400
Revenue accruing to other roads .....	\$ 362 173

## SOUTHERN PACIFIC COMPANY

Sheet 1 of  
2 sheets

## AUTOS TRANSPORTED BY RAIL FROM RAYNER, CALIFORNIA

YEAR 1925

Destination	Number of Paids	Charges	S.P.Co. Revenue	Revenue of Other Roads
Bigby, Idaho	71	\$7 077 00	\$724 42	\$6 352 58
Driggs, "	51	5 111 17	523 19	4 587 98
Frederick, "	151	12 940 44	1 529 33	11 411 11
Arco, "	66	6 027 30	632 87	5 394 43
Superior, "	127	15 574 96	1 664 32	13 908 64
Burley, "	142	12 906 80	1 381 03	11 525 77
Ashton, "	56	5 504 33	563 44	4 940 89
Postville, "	223	20 357 78	2 198 64	18 159 14
Malad City, "	74	6 185 41	724 42	5 460 99
American Falls, "	93	8 482 24	916 08	7 566 16
Dubois, "	40	3 931 67	402 45	3 529 22
Grange, "	66	6 043 00	643 93	5 399 07
Mackey, "	67	6 683 83	684 17	5 999 66
Idaho Falls, "	600	56 543 40	5 937 06	50 606 34
St. Anthony, "	87	8 649 67	885 40	7 764 27
Blackfoot, "	155	14 545 80	1 541 85	13 003 95
Soda Springs, "	107	10 197 57	1 086 63	9 110 94
Barburg, "	131	12 974 50	1 328 10	11 646 40
Salmon, (Mackey) "	71	7 077 00	724 42	6 352 58
Parlier, Arizona	83	3 375 59	776 39	2 599 20
Prescott, "	191	10 979 94	1 928 91	9 051 03
Winelow, "	49	3 709 44	482 23	3 227 21
Ajo, "	57	3 180 84	2 385 63	795 21
Flagstaff, "	280	19 149 98	2 812 99	16 336 99
Holbrook, "	191	15 431 27	1 928 91	13 502 36
Cottonwood, (Clarkdale) "	334	20 383 37	3 375 59	17 007 78
Kingman, Arizona	63	3 041 74	642 97	2 398 77
Seligman, "	129	7 765 10	1 285 94	6 479 16
St. Johns, (Holbrook) "	75	6 108 21	763 53	5 344 68
Superior, Arizona	104	7 394 15	5 545 61	1 848 54
Springerville, (up) "	100	10 587 36	1 004 64	9 582 72
Glendale, Arizona	532	30 218 03	5 344 68	24 873 35
Wickenburg, "	225	12 723 38	2 250 39	10 472 99
Williams, "	40	2 627 52	401 86	2 225 66
Lordburg, N.M.	165	14 258 16	14 258 16	-
Las Vegas, Nevada	729	26 427 31	5 285 46	21 141 85
Pioche, "	68	3 976 64	795 33	3 181 31
Provo, Utah	409	27 601 44	3 974 61	23 626 83
Cedar City, "	276	16 165 32	2 683 44	13 481 88
Spanish Fork, "	303	20 569 27	2 961 97	17 607 30
Ogden, "	423	28 687 93	4 131 06	24 556 87
Salt Lake City, "	2 840	192 141 62	27 668 39	164 473 23
Brigham City, "	118	8 507 62	1 131 51	7 376 11
Fillmore, "	51	3 047 64	505 91	2 541 73
Tremonton, "	130	9 775 78	1 251 30	8 524 48
Hotter, "	88	5 953 68	857 33	5 096 35
St. George, (Cedar City) Utah	47	2 813 36	467 02	2 346 34
Tonala, Utah	109	7 304 79	1 051 89	6 252 90
Park City, "	23	1 754 95	235 16	1 519 79

[fol. 852]

SOUTHERN PACIFIC COMPANY  
AUTOS TRANSPORTED BY RAIL FROM RAYMER, CALIFORNIA

Sheet 2 of  
2 sheets

YEAR 1955 (Cont'd.)

<u>Destination</u>	<u>Number of Units</u>	<u>Charges</u>	<u>S.P.Co. Fares</u>	<u>Revenue of Other Roads</u>
Coalville, Utah	61	\$4 380 37	\$586 97	\$3 793 40
Hopki, "	81	4 818 20	775 73	4 042 47
Layton, "	144	9 742 39	1 402 90	8 339 49
Morgan, "	68	4 966 69	665 54	4 301 15
Logan, "	78	5 802 74	777 57	5 025 17
Bountiful, "	466	31 388 15	4 519 89	26 868 26
Delta, "	78	4 447 32	738 26	3 709 06
American Fork, "	129	8 657 90	1 246 74	7 411 16
Beaver, (Wilford) "	25	1 403 68	233 01	1 170 67
Hurricane, (Ordor City) Utah	24	1 405 68	233 34	1 172 34
Magna (East Magna) Utah	162	10 820 88	2 622 07	8 198 81
	<u>11 926</u>	<u>\$840 309 30</u>	<u>\$136 084 78</u>	<u>\$704 224 52</u>

G.S.V.



**SOUTHERN PACIFIC COMPANY**  
**AUTOS TRANSPORTED BY RAIL FROM RATHER, CALIFORNIA**

Sheet 1 of  
2 sheets

\* ALL MONTHS ENDING JUNE 30, 1924

Destination	Number of Auto	CHARGES	S.P.Co. Revenue	Revenue of Other Roads
Parlier, Arizona	62	\$2 435 02	\$960 06	\$1 074 96
Winnlow, "	17	1 562 43	199 24	1 363 19
Prosscott, "	65	3 723 18	632 61	3 090 57
Ajo, "	37	2 078 02	1 358 32	539 70
Flagstaff, "	76	5 327 07	753 74	4 573 33
Holbrook, "	64	5 270 39	634 01	4 636 38
Cottonwood, "	127	7 938 96	1 264 59	6 674 37
Kingsman, "	24	1 149 79	234 80	914 99
Seligman, "	70	4 470 94	711 71	3 759 23
St. Johns, "	42	5 998 31	722 19	5 276 12
Superior, "	47	3 502 21	475 51	3 026 70
Springerville, "	50	5 226 47	479 27	4 747 20
Glendale, "	211	12 247 22	2 096 49	10 150 73
Wickenburg, "	123	7 170 35	1 226 26	5 944 09
Williams, "	19	4 141 21	601 12	3 540 09
Lordsburg, New Mexico	63	5 614 72	5 614 72	10 560 08
Las Vegas, Nevada	348	13 200 11	2 640 03	2 212 82
Rigby, Idaho	21	2 455 10	242 28	1 835 94
Briggs, "	17	2 037 84	201 90	6 506 98
Preston, "	85	7 433 96	847 98	2 115 76
Aroo, "	24	2 353 26	237 50	6 208 17
Rupert, "	69	6 920 42	712 25	5 168 99
Burley, "	60	5 762 02	593 03	2 212 82
Ashton, "	21	2 455 10	242 28	13 911 02
Footstello, "	162	15 525 15	1 614 13	2 230 90
Malad City, "	27	2 503 56	282 66	3 106 78
American Falls, "	33	3 463 21	356 43	1 835 94
Dubois, "	19	2 037 84	201 90	1 757 87
Grace, "	20	1 999 77	201 90	2 212 82
Mackay, "	26	2 455 10	242 28	18 683 44
Idaho Falls, "	211	20 781 54	2 098 10	3 319 24
St. Anthony, "	35	3 682 66	163 42	6 269 59
Blackfoot, "	75	6 981 11	711 52	4 935 78
Soda Springs, "	54	5 501 10	565 32	5 532 06
Rexburg, "	58	6 137 76	605 70	4 425 65
Salmon, "	45	4 910 21	484 56	9 926 97
Provo, Utah	163	11 533 61	1 606 64	7 789 53
Cedar City, "	152	9 272 79	1 483 26	10 655 31
Spanish Fork, "	174	12 379 78	1 724 47	15 262 56
Ogden, "	250	17 731 57	2 469 01	90 825 04
Salt Lake City, "	1 511	105 515 40	14 690 36	4 790 09
Brigham City, "	69	5 499 04	708 95	2 254 74
Fillmore, "	42	2 684 72	429 98	4 175 59
Tremonton, "	61	4 770 71	597 12	1 699 04
Heber, "	29	1 973 11	274 07	1 230 69
St. George, Cedar City, "	24	1 464 90	234 21	2 909 91
Tooele, Utah	180	3 380 68	470 77	523 35
Park City, "	188	601 82	78 49	1 857 68
Coalville, "	28	2 132 60	274 92	

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[fol. 854]

Sheet 2 of  
2 sheets

## SOUTHERN PACIFIC COMPANY

AUTOS TRANSPORTED BY RAIL FROM RATHER, CALIFORNIA

ALL MONTHS ENDING JUNE 30, 1934 (Cont'd.)

Destination		Number of Raids	Shoppers	S.P.Co. Shoppers	Revenue of Other Raids
Bohdi,	Utah	31	\$1 795 10	\$672 39	\$1 428 79
Layton,	"	66	4 702 34	666 96	4 115 68
Hesper,	"	49	3 447 00	471 46	3 176 42
Logan,	"	61	6 467 00	697 06	5 880 74
Deschutes,	"	201	14 042 11	1 796 71	12 309 40
Delta,	"	43	2 602 72	439 66	2 253 06
American Fork,	"	99	4 222 05	500 00	3 624 05
Beaver, (Milford)	"	11	734 45	117 42	617 03
Shoshone, (East Hager) Utah		11	734 45	117 42	617 03
Hager,	Utah	191	10 669 44	1 489 11	9 200 33
		5 771	\$425 592 08	\$63 400 02	\$362 172 07

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## APPLICANT'S EXHIBIT 125

RAIL SHIPMENTS BY SOUTHERN PACIFIC COMPANY  
OF AUTOMOBILES FROM OAKLAND, CALIFORNIA FOR  
GENERAL MOTORS CORPORATION TO DESTINATIONS  
NOT SERVED BY SOUTHERN PACIFIC COMPANY

YEAR 1955

As detailed on attached sheets  
numbered 1 to 4, inclusive:

Number of units .....	34 712
Southern Pacific Company revenue .....	\$1 817 403
Revenue accruing to other roads .....	\$ 883 239

JANUARY 1ST TO JUNE 30, 1956

As detailed

on attached sheets numbered 1 to 4,  
inclusive:

Number of Units .....	17 095
Southern Pacific Company revenue .....	\$ 918 129
Revenue accruing to other roads .....	\$ 447 400

## YEAR 1922

Destination	Number of Trains	Charges	S.P.Co. Revenue	Revenue of Other Roads
East Ely,	Nevada 122	\$11 514 00	\$7 944 66	\$3 569 34
Wendover,	Utah 41	2 737 75	629 68	2 108 07
Beise,	Idaho 1 248	124 980 91	72 256 93	52 323 98
Donners Ferry,	" 121	13 407 24	8 714 71	4 692 53
Dahl,	" 125	11 447 21	6 639 38	4 807 83
Calwell,	" 332	34 046 22	19 746 81	14 299 41
Coccard-Alamo,	" 183	17 688 97	11 497 83	6 191 14
Craigmont,	" 49	5 002 08	2 897 53	2 104 55
Donnelly,	" 103	11 977 52	6 946 96	5 030 56
Emmett,	" 78	7 789 71	4 518 03	3 271 68
Glenns Ferry,	" 37	3 991 68	2 083 17	1 508 51
Gooding,	" 198	18 093 14	10 494 02	7 999 12
Grangeville,,	" 116	12 093 19	7 005 51	5 087 68
Hailey,	" 86	7 809 13	4 529 30	3 279 83
Kellogg,	" 138	14 915 25	9 694 91	5 220 34
Jermyn,	" 144	13 295 86	7 711 60	5 584 26
Lewiston,	" 542	51 326 65	29 274 29	22 052 36
Macou,	" 196	18 840 47	12 246 31	6 594 16
Mountain Home,	" 131	13 178 82	7 643 72	5 535 10
Pampa,	" 179	18 000 30	10 440 17	7 560 13
Orufino,	" 135	13 717 07	7 901 57	5 815 50
Pasco,	" 10	816 39	473 51	342 88
Payette,	" 127	13 128 25	7 614 39	5 513 86
Postleth,	" 29	2 691 50	1 627 01	1 064 49
Priest River,	" 66	6 929 64	4 504 27	2 425 37
St. Maries,	" 109	14 061 26	6 783 06	7 278 20
Shoshone,	" 62	5 535 94	3 210 85	2 325 09
Sand Point,	" 126	13 429 94	8 729 46	4 700 48
Twin Falls,	" 334	28 162 96	16 334 52	11 828 44
Wallace,	" 132	14 480 45	9 412 29	5 068 16
Weiser,	" 156	15 997 62	9 278 62	6 719 00
Arlington,	Oregon 73	4 878 77	3 171 20	1 707 57
Astoria,	" 229	15 453 43	11 590 07	3 863 36
Baker,	" 196	17 496 41	11 372 67	6 123 74
Bend,	" 170	9 901 02	6 435 66	3 465 36
Burns,	" 100	10 926 55	5 463 28	5 463 27
Clatskanie,	" 137	9 218 11	6 913 68	2 304 43
Condon,	" 80	5 422 19	3 524 52	1 897 67
Enterprise,	" 38	3 442 56	2 148 16	1 294 40
Fossil,	" 27	1 899 96	1 234 97	664 99
Gresham,	" 370	24 945 25	17 012 66	7 932 59
Heppner,	" 114	8 160 08	5 304 05	2 856 03
Hornston,	" 130	9 526 89	6 192 48	3 334 41
Hood River,	" 178	10 372 69	6 742 25	3 630 40
John Day,	" 205	13 827 17	10 370 38	3 456 79
LaGrande,	" 214	15 816 24	10 280 56	5 535 68
Madras,	" 150	8 721 85	5 669 20	3 052 65
Milton-Freewater,	" 225	17 903 22	11 633 09	6 270 13
Ryegate,	" 114	11 481 47	6 659 25	4 822 22

## SOUTHERN PACIFIC COMPANY

Sheet 2 of  
4 sheets.

ARTICLE TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

YEAR 1921 (Cont. 4.)

Destination	Number of Tons	Charges	S.P.Co. Rates	Revenue of Other Roads
Oakland	114	\$11 481 47	\$6 699 25	\$4 822 22
Ontario	114	8 999 30	5 849 55	3 149 75
Pendleton	60	4 796 08	3 117 45	1 678 63
Pilot Rock	165	11 886 81	6 557 48	5 329 33
Prineville	104	7 050 44	5 287 83	1 762 61
Rainier	112	6 603 35	4 292 18	2 311 17
Redmond	224	15 183 72	11 387 79	3 795 93
St. Helens	52	3 941 53	3 143 84	797 69
St. Paul	139	9 954 87	7 738 68	2 216 19
Sandy	43	2 982 80	2 237 10	745 70
Seaside	119	9 332 81	7 255 01	2 077 80
Sweet Home	409	24 053 05	15 634 48	8 418 57
The Dalles	46	3 928 55	2 553 56	1 374 99
Union	63	6 674 10	3 870 98	2 803 12
Vale	56	3 795 93	2 846 74	948 98
Vernonia	272	18 438 23	13 628 67	4 809 56
Washington	36	3 440 40	2 167 45	1 272 95
Aberdeen	117	9 542 46	6 679 72	2 862 74
Almira	97	6 507 02	4 554 91	1 952 11
Anacortes	607	41 215 81	30 911 86	10 303 95
Arlington	197	13 285 75	9 964 31	3 321 44
Astoria	339	27 971 03	19 583 22	8 392 81
Bellview	89	5 963 60	4 174 52	1 789 08
Bellingham	578	41 299 94	28 909 96	12 389 98
Bethell	137	12 839 93	7 703 96	5 135 97
Bromont	111	6 605 35	4 954 01	1 651 34
Brouwer	56	4 365 15	2 838 00	1 528 15
Camas	178	11 929 21	8 946 91	2 982 30
Cashmere	199	10 346 37	8 134 78	2 211 59
Castle Rock	152	10 302 95	7 727 21	2 575 74
Centralia	41	3 400 37	2 210 24	1 190 13
Chablis	234	22 266 97	13 983 66	8 283 31
Chelan	36	3 777 58	2 153 22	1 624 36
Cheney	70	4 713 58	3 063 83	1 649 75
Chewelah	217	20 730 97	13 019 05	7 711 92
Cleelum	78	7 970 89	4 543 41	3 427 48
Colfax	54	4 968 13	3 129 92	1 838 21
Colville	58	3 793 93	2 845 45	948 48
Coulee City	60	5 759 49	3 616 96	2 142 53
Coperville	32	2 721 09	1 768 71	952 38
Davenport	65	6 743 54	3 857 30	2 886 24
Dayton	497	47 607 93	29 897 78	17 710 15
Dear Park	126	8 402 99	5 882 09	2 520 90
Dickman	130	11 532 05	6 506 03	5 026 02
East Stinson	282	18 977 65	13 248 36	5 729 29
Eatonville	109	7 743 11	5 033 02	2 710 09
Edmonds	73	4 878 77	3 659 08	1 219 69
Ellensburg	158	10 572 66	7 400 86	3 171 80
Elma	160	14 104 75	9 168 09	4 936 66
Emmelen				
Ephrata				

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[fol. 858]

## SOUTHERN PACIFIC COMPANY

Sheet 3 of  
4 sheets

AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

YEAR 1925 (Cont'd.)

Destination	Number of Trails	Charges	S.P.Co. Fares	Revenue of Other Roads
Everett, Washington	330	\$22 232 16	\$15 562 51	\$6 669 65
Forcedale, "	115	9 544 46	6 681 12	2 863 34
Friday Harbor, "	26	1 624 26	1 218 20	406 06
Gig Harbor, "	72	4 880 77	3 660 98	1 220 19
Goldendale, "	42	2 709 09	2 031 82	677 27
Grand Coulee, "	54	4 968 13	3 129 92	1 838 21
Grandview, "	60	4 302 62	2 796 70	1 505 92
Isacuan, "	181	12 200 92	8 540 64	3 660 28
Kelso, "	101	6 776 73	5 082 55	1 694 18
Kent, "	227	14 906 01	11 179 51	3 726 50
Kirkland, "	249	16 809 98	11 766 99	5 042 99
Leavenworth, "	44	3 430 83	2 230 04	1 200 79
Lind, "	47	4 232 05	2 790 83	1 441 22
Longview, "	286	19 249 36	14 437 02	4 812 34
Lynden, "	92	9 191 79	5 299 30	3 892 49
Marysville, "	202	13 555 46	9 488 82	4 066 64
Metalline Falls, "	24	3 534 29	1 446 28	2 088 01
Muroc, "	92	7 174 10	4 663 17	2 510 93
Montesano, "	198	13 283 75	9 962 81	3 320 94
Morton, "	34	3 257 97	1 625 75	1 632 22
Moses Lake, "	172	16 374 75	8 903 77	7 470 98
Nt. Vernon, "	265	17 894 81	12 526 37	5 368 44
Reche, "	106	7 577 93	4 925 65	2 652 28
Sequim, "	49	5 034 77	2 869 82	2 164 95
North Bend, "	77	5 190 48	3 605 34	1 585 14
Oak Harbor, "	79	6 583 42	4 608 39	1 975 03
Odesse, "	42	3 711 67	2 408 87	1 302 80
Okanogan, "	54	4 707 04	2 944 22	1 762 82
Olympia, "	276	18 709 93	14 032 45	4 677 48
Omak, "	49	4 530 80	2 718 48	1 812 32
Palouse, "	25	2 230 99	1 432 46	848 53
Pasco, "	640	45 889 93	29 828 45	16 061 48
Pomeroy, "	49	4 342 82	2 822 83	1 519 99
Port Angeles, "	171	11 661 90	8 746 13	2 915 77
Port Graham, "	131	8 948 41	6 711 31	2 237 10
Port Townsend, "	66	4 335 35	3 251 51	1 083 84
Poulsbo, "	66	4 335 35	3 251 51	1 083 84
Prosser, "	76	5 490 11	3 542 57	1 907 54
Pullman, "	112	10 749 99	6 790 99	3 999 00
Puyallup, "	107	7 873 56	5 905 17	1 968 39
Quincy, "	59	5 101 55	3 316 01	1 785 54
Rainier, "	139	9 491 82	7 118 87	2 372 95
Renton, "	449	30 367 44	22 775 58	7 591 86
Republic, "	23	2 520 38	1 436 62	1 083 76
Ritaville, "	48	4 363 61	2 836 35	1 527 26
Rockford, "	23	2 304 98	1 447 53	857 46
Rosalia, "	99	5 799 49	3 616 96	2 182 53
Seattle, "	6 362	431 125 76	323 443 20	107 682 56
Sedro Woolley, "	211	14 372 99	10 060 81	4 311 78

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[fol. 859]

SOUTHERN PACIFIC COMPANY  
AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA  
YEAR 1921 (Cont'd.)

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Shelton, Washington	195	\$13 287 75	\$9 965 81	\$3 321 94
Snohomish, "	167	11 389 79	7 972 85	3 416 94
Spokane, "	1 839	176 613 75	110 913 44	65 700 31
Sprague, "	13	1 142 10	721 81	420 29
Stevens, "	55	3 303 67	2 477 75	825 92
Stevens, "	140	9 489 82	7 117 37	2 372 45
Sumner, "	170	12 043 74	7 828 43	4 215 31
Sunnyside, "	1 575	106 833 46	80 125 10	26 708 36
Tacoma, "	42	3 837 00	2 494 05	1 342 95
Tekoa, "	48	4 720 79	2 832 47	1 888 32
Tonasket, "	139	11 496 99	7 473 04	4 023 95
Toppenish, "	24	2 115 01	1 269 01	846 00
Twisp, "	587	39 546 24	29 699 68	9 846 56
Vancouver, "	242	19 180 30	12 467 20	6 713 10
Walla Walla, "	47	3 733 87	2 427 02	1 306 85
Wapato, "	41	3 525 69	2 291 70	1 233 99
Washburn, "	25	2 030 42	1 319 77	710 65
Waterville, "	257	20 461 39	13 299 90	7 161 49
Wenatchee, "	113	6 601 35	4 951 01	1 650 34
White Salmon, "	92	6 237 32	4 677 99	1 599 33
Winlock, "	32	2 169 68	1 627 26	542 42
Winnemucca, "	134	8 946 41	6 709 81	2 236 60
Woodland, "	654	46 748 06	30 386 24	16 361 82
	34 712	\$2 700 642 01	\$1 817 403 37	\$883 238 64

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## SOUTHERN PACIFIC COMPANY

Sheet 1 of  
4 sheets

AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

SIX MONTHS ENDED JUNE 30, 1956

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Mendocino, Nevada	12	\$854 62	\$196 57	\$658 05
Ely, "	42	3 919 50	2 704 46	1 215 04
Buhl, Idaho	57	5 400 19	3 132 11	2 268 08
Gooding, "	93	8 863 09	5 140 59	3 722 50
Hailey, "	43	3 876 64	2 248 45	1 628 19
Jerome, "	67	6 558 49	3 803 93	2 754 56
Twain Falls, "	132	11 668 87	6 767 94	4 900 93
Shoshone, "	38	3 859 40	2 238 45	1 620 95
Boise, "	522	54 135 99	31 398 87	22 737 12
Bonners Ferry, "	62	7 455 28	4 845 94	2 609 34
Caldwell, "	140	14 527 11	8 425 72	6 101 39
Coeur d'Alene, "	108	10 706 11	6 958 90	3 747 13
Craigmont, "	17	1 743 67	1 133 39	610 28
Donnelly, "	49	5 754 01	3 337 33	2 416 68
Emmett, "	37	3 836 88	2 225 39	1 611 49
Glenas Ferry, "	18	1 666 75	966 71	700 04
Grangeville, "	57	6 094 91	3 532 08	2 562 83
Kellogg, "	82	9 153 45	5 949 75	3 203 70
Leviaton, "	271	26 557 61	15 150 34	11 407 27
Moscow, "	141	13 884 88	9 025 18	4 859 70
Mountain Home, "	84	8 753 05	5 076 77	3 676 28
Nampa, "	87	8 747 05	5 073 29	3 673 76
Orofino, "	54	5 362 60	3 081 85	2 280 75
Parma, "	10	1 283 63	744 11	539 12
Payette, "	57	5 985 93	3 471 84	2 514 09
Potlatch, "	20	1 582 38	938 55	643 83
Priest River, "	26	2 699 65	1 754 77	944 88
St. Maries, "	90	12 383 57	5 927 83	6 455 74
Sand Point, "	68	7 677 58	4 990 42	2 687 16
Wallace, "	39	4 580 72	2 977 47	1 603 25
Weiser, "	90	9 830 21	5 701 87	4 128 94
Aberdeen, Washington	139	9 459 90	7 102 43	2 357 47
Almira, "	16	1 584 93	999 71	585 22
Anacortes, "	45	3 744 60	2 621 22	1 123 38
Arlington, "	57	3 901 77	2 731 24	1 170 53
Auburn, "	383	26 744 99	20 058 74	6 686 25
Bellevue, "	183	12 814 65	9 610 98	3 203 67
Bellingham, "	171	14 621 77	10 235 24	4 386 53
Bothell, "	258	17 830 11	12 481 07	5 349 04
Bremerton, "	192	13 901 39	9 730 97	4 170 42
Brewster, "	48	4 299 81	2 579 89	1 719 92
Camas, "	68	4 188 99	3 141 75	1 047 24
Cashmere, "	32	2 243 57	1 458 32	785 25
Castle Rock, "	87	5 849 65	4 387 24	1 462 41
Centralia, "	90	6 410 32	4 807 74	1 602 58
Chehalis, "	72	4 729 95	3 547 47	1 182 48
Chelan, "	16	1 407 85	915 10	492 75
Cheney, "	100	9 511 12	5 979 84	3 531 28

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## SOUTHERN PACIFIC COMPANY

## AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

SIX MONTHS ENDED JUNE 30, 1926 (Cont'd.)

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Chewelah	Washington 15	\$1 304 96	\$744 72	\$560 24
Cle Elum	" 35	2 565 86	1 667 80	898 06
Colfax	" 107	10 708 12	6 732 36	3 975 76
Colville	" 44	4 824 09	2 753 30	2 070 79
Coulee City	" 15	1 176 90	742 25	434 65
Coupeville	" 28	1 951 88	1 463 91	487 97
Devenport	" 31	2 771 37	1 742 44	1 028 93
Dayton	" 6	353 07	229 30	123 57
Dear Park	" 65	9 638 34	5 513 13	4 125 21
Dishman	" 435	43 206 70	27 164 47	16 042 23
East Stanwood	" 57	3 901 77	2 731 24	1 170 53
Estacoville	" 88	7 817 39	4 385 74	3 431 65
Edmonds	" 154	10 589 60	7 412 72	3 176 88
Ellensburg	" 72	5 024 18	3 265 72	1 758 46
Elmo	" 34	2 231 39	1 673 55	557 84
Emmuelaw	" 86	5 851 64	4 096 15	1 755 49
Ephrata	" 65	5 820 09	3 783 07	2 037 02
Everett	" 174	11 974 46	8 382 12	3 592 34
Ferndale	" 43	3 394 42	2 376 09	1 018 33
Friday Harbor	" 5	281 51	211 13	70 38
Big Harbor	" 42	2 782 07	2 086 56	695 51
Goldendale	" 23	1 670 37	1 252 78	417 59
Grand Coulee	" 26	2 361 82	1 489 55	872 27
Grandview	" 36	2 657 85	1 727 60	930 25
Issaquah	" 93	6 404 32	4 483 03	1 921 29
Kelso	" 54	3 616 26	2 712 20	904 06
Kent	" 115	8 076 70	6 057 53	2 019 17
Kirkland	" 108	7 524 03	5 266 82	2 257 21
Leavenworth	" 18	1 285 33	835 47	449 86
Lind	" 20	1 452 97	944 43	508 54
Longview	" 134	9 188 39	6 891 29	2 297 10
Lynden	" 24	2 477 52	1 425 32	1 052 20
Marysville	" 89	6 120 81	4 284 56	1 836 25
Nataline Falls	" 5	619 33	252 47	366 86
Norcon	" 43	3 207 80	2 085 07	1 122 73
Montesano	" 104	7 240 51	5 430 38	1 810 13
Norton	" 27	2 948 29	1 465 41	1 482 88
Nose Lake	" 98	9 449 74	5 979 04	3 470 70
Wt. Vernon	" 103	7 242 51	5 069 75	2 172 76
Naches	" 104	7 796 29	5 067 59	2 728 70
Nasport	" 25	2 628 09	1 494 54	1 133 55
Northland	" 93	6 404 32	4 483 03	1 921 29
Oak Harbor	" 28	2 382 34	1 667 64	714 70
Odessa	" 16	1 541 34	1 001 87	539 47
Okanogan	" 27	2 741 24	1 644 75	1 096 49
Olympia	" 136	9 475 90	7 106 93	2 368 97
Omak	" 27	2 741 23	1 644 74	1 096 49

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## SOUTHERN PACIFIC COMPANY

Sheet 3 of  
4 sheets

## AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

SIX MONTHS ENDED JUNE 30, 1956 (Cont'd.)

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Palouse, Washington	22	\$2 377 99	1 494 99	\$883 00
Pasco, "	173	12 720 22	8 268 15	4 452 07
Pomeroy, "	14	1 114 88	724 67	390 21
Port Angeles, (Via Seattle) "	80	5 572 14	4 179 10	1 393 04
Port Orchard, ( " " ) "	44	3 069 58	2 302 19	767 39
Port Townsend, ( " " ) "	17	1 115 69	836 77	278 92
Poulsbo, ( " " ) "	25	1 666 37	1 249 78	416 59
Prosser, Washington	26	1 767 90	1 149 13	618 77
Pullman, Washington	60	5 546 75	3 487 39	2 059 36
Puyallup, "	50	3 624 26	2 718 20	906 06
Quincy, "	16	1 407 85	915 11	492 74
Raymond, "	89	6 120 84	4 590 61	1 530 20
Renton, "	228	15 882 22	11 911 66	3 970 56
Republic, "	25	2 619 91	1 495 13	1 124 78
Ritsville, "	16	1 504 56	977 96	526 60
Rockford, "	15	1 181 00	742 47	438 53
Rosalia, "	34	3 176 75	1 997 42	1 179 33
Seattle, "	2 775	193 358 45	145 018 84	48 339 61
Sedro Woolley, "	73	5 019 46	3 513 62	1 505 84
Shelton, "	107	7 526 03	5 644 52	1 881 51
Snodish, "	120	8 358 21	5 850 75	2 507 46
Spokane, "	860	84 834 19	53 336 37	31 497 82
Sprague, "	4	400 66	253 62	147 04
Stevenson, "	30	1 721 76	1 291 32	430 44
Sumner, "	70	4 733 95	3 550 46	1 183 49
Sunnyside, "	70	5 028 18	3 268 32	1 759 86
Tacoma, "	737	51 264 93	38 448 70	12 816 23
Takoa, "	30	2 773 37	1 802 69	970 68
Tonasket, "	12	1 218 32	731 00	487 32
Toppenish, "	49	3 541 80	2 302 17	1 239 63
Twisp, (Pateros) "	14	1 086 28	651 77	434 51
Vancouver, "	418	25 616 56	19 212 42	6 404 14
Valla Valla, "	155	12 848 85	8 351 76	4 497 09
Wapato, "	16	1 187 17	771 66	415 51
Washburn, "	6	366 69	238 35	128 34
Waterville, (Via Douglas) Wn.	22	2 097 38	1 363 30	734 08
Wenatchee, Washington	104	8 564 57	5 566 97	2 997 60
Winlock, "	43	2 780 07	2 085 06	695 01
Winslow, (Via Seattle) "	17	1 115 69	836 77	278 92
White Salmon, "	73	4 437 80	3 328 35	1 109 45
Woodland, "	52	3 620 26	2 715 20	905 06
Yakima, "	301	22 199 87	14 429 92	7 769 95
Arlington, Oregon	38	2 790 07	1 813 55	976 52
Astoria, "	113	7 805 54	5 854 16	1 951 38
Baker, "	93	8 559 33	5 563 57	2 995 76
Bea, "	108	6 652 21	4 323 94	2 328 27
Burns, "	69	7 606 11	3 803 06	3 803 05
Clatskanie, "	53	3 618 26	2 713 70	904 56

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SOUTHERN PACIFIC COMPANY  
 AUTOS TRANSPORTED BY RAIL FROM OAKLAND, CALIFORNIA

Sheet  
 4 of 4

SIX MONTHS ENDING JUNE 30, 1936 (Cont'd.)

Destination	Number of Units	Charges	S.P.Co. Revenue	Revenue of Other Roads
Condon, Oregon	37	\$2 500 55	\$1 625 36	\$875 19
Enterprise, "	57	5 586 90	3 494 34	2 092 56
Forest, (Condon) "	16	1 117 69	726 49	391 21
Gresham, "	188	13 096 16	8 935 32	4 160 01
Hopner, "	61	4 144 41	2 693 06	1 450 51
Horniston, "	71	5 211 44	3 387 44	1 824 00
Wood River, "	123	8 515 67	5 535 19	2 980 40
John Day, "	91	6 408 32	4 806 24	1 602 06
LaGrange, "	106	8 100 14	5 265 09	2 835 05
Madras, "	75	4 677 63	3 040 46	1 637 17
Milton-Freewater, "	95	7 571 82	4 921 68	2 650 14
Nyssa, "	44	4 708 31	2 730 82	1 977 49
Ontario, "	50	5 557 22	3 223 19	2 334 03
Pendleton, "	10	8 638 39	5 614 96	3 023 43
Pilot Knob, "	23	1 975 51	1 284 09	691 42
Prineville, "	72	5 070 51	2 792 91	2 277 60
Rainier, "	34	2 231 39	1 673 55	557 84
Redmond, "	54	3 196 70	2 077 85	1 118 85
St. Helens, "	96	6 689 83	5 017 37	1 672 46
St. Paul, (Donald) "	21	1 587 19	1 269 10	318 09
Sandy, (Boring) "	54	4 136 61	3 278 70	857 91
Seaside, "	31	1 945 88	1 499 40	486 48
Sweet Home, "	61	4 787 38	3 822 34	965 04
The Dalles, "	145	8 862 62	5 760 70	3 101 92
Union, "	23	2 215 25	1 439 91	775 34
Vale, "	24	2 605 56	1 511 23	1 094 33
Vernonia, "	20	1 109 69	832 27	277 45
	17 095	\$1 365 534 57	\$918 128 54	\$447 406 08

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FILE COPY

No. [REDACTED]

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Office-Supreme Court, U.S.

FILED

MAY 22 1959

JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**

October Term, 1958

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,  
*Appellants,*

v.

UNITED STATES OF AMERICA and  
INTERSTATE COMMERCE COMMISSION,  
and

PACIFIC MOTOR TRUCKING Co. and  
GENERAL MOTORS CORPORATION,  
*Appellees.*

On Appeal from the United States District Court  
for the District of Columbia

**JURISDICTIONAL STATEMENT**

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No.

IN THE

**Supreme Court of the United States**

October Term, 1958

---

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,  
*Appellants,*

v.

UNITED STATES OF AMERICA and  
INTERSTATE COMMERCE COMMISSION,

and

PACIFIC MOTOR TRUCKING Co. and  
GENERAL MOTORS CORPORATION,  
*Appellees.*

---

On Appeal from the United States District Court  
for the District of Columbia

---

**JURISDICTIONAL STATEMENT**

---

Appellants, American Trucking Associations, Inc., its Contract Carrier Conference, National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., appeal from the judgment of the United States District Court for the District of Columbia, entered January 30, 1959, dismissing their complaint to set aside an order of the Interstate Commerce Commission, dated September 9, 1958, authorizing the performance of unrestricted motor carrier operations by Pacific Motor



Trucking Company, a wholly-owned subsidiary of Southern Pacific Company, a common carrier by railroad. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

### OPINION BELOW

The opinion of the District Court is reported at 170 F. Supp. 38 (adv. sheets). Copies of the opinion and judgment are attached hereto as Appendix A. A copy of the report and order of the Interstate Commerce Commission in *Pacific Motor Trucking Company Extension—Oregon*, 77 M.C.C. 605,<sup>1</sup> is attached hereto as Appendix B. A copy of the Commission's earlier report and order in the Sub. 34 case, 71 M.C.C. 561,<sup>2</sup> is attached hereto as Appendix C.

### JURISDICTION

This suit was brought under 28 U.S.C. § 1336, to set aside an order of the Interstate Commerce Commission. The judgment of the District Court was entered on January 30, 1959, and notice of appeal was filed on March 27, 1959. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Sections 1253 and 2101(b) of the Judicial Code, 28 U.S.C. § 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on

<sup>1</sup> Embracing four consolidated cases docketed as Subs. Nos. 34, 35, 36, and 37. Although the principal caption of the Commission's report in the consolidated cases is Sub. 34, the great bulk of the authority granted arises from the Sub. 37 application. See Appendix B, *infra*, p. 80.

<sup>2</sup> The Commission's first report and order in the Sub. 34 case dealt only with the rail subsidiary's application for authority between Oakland, Calif., and points in Oregon on Southern Pacific's lines. Subsequently, the Commission granted reconsideration in the Sub. 34 case, and consolidated the four proceedings.

direct appeal in this case: *M. & M. Transportation Co. v. U. S.*, 350 U. S. 857, *Frozen Food Express, Inc. v. U. S.*, 351 U. S. 440, *American Trucking Associations, Inc., et al. v. Frisco Transportation Company*, 358 U. S. 133.

### STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding § 1, and Sections 5(2)(a) and (b), 207(a), 209(b), and 210 of the Interstate Commerce Act, 49 U.S.C. §§ 5(2)(a) and (b), 307(a), 309(b), and 310, are set forth verbatim in Appendix D hereto.

### QUESTIONS PRESENTED

1. Whether the Interstate Commerce Commission in the absence of "special circumstances" such as those disclosed in *American Trucking Associations, Inc., et al. v. U. S.*, *et al.*, 355 U. S. 141, may authorize a railroad subsidiary to conduct completely unrestricted motor contract carrier operations to all points on its parent railroad's lines?

2. Whether the District Court correctly found the existence of "special circumstances" justifying the performance of unrestricted motor service by the rail subsidiary, such findings being directly contrary to those of the Commission itself?

3. Whether the Interstate Commerce Commission, without satisfying the requirements of, or observing the policy underlying, § 210 of the Interstate Commerce Act, may validly issue a contract carrier permit to a railroad's motor-carrier subsidiary under the following circumstances:

a. Where the subsidiary also holds a common carrier certificate authorizing the transportation of closely-related commodities for the same shipper and receivers and within the same territory.

6. Where the parent company engages in transportation of the same commodities as a rail common carrier, for the same shipper and receivers, as well as competing automobile manufacturers and their dealers, within the same territory?

4. Whether the 1957 amendments to the provisions of the Interstate Commerce Act, Part II, dealing with motor contract carriers, were intended to alter the Congressional policy against rail entry into the motor carrier field?

5. Whether independent motor carriers, found by the Commission to be "authorized to conduct the proposed operations" and motor-carrier associations, all of whom were protestants before the Interstate Commerce Commission, have standing to bring suit to set aside its report and order authorizing unrestricted motor service by a rail subsidiary?

### STATEMENT

Pacific Motor Tracking Company, hereinafter called PMT, is a wholly-owned subsidiary of Southern Pacific Company, a common carrier by railroad. It conducts widespread motor common carrier operations, largely restricted to so-called auxiliary and supplemental service.<sup>3</sup> Its present contract carrier authority is limited to the transportation of new automobiles, new trucks and new buses (1) from Oakland, Calif., to Hawthorne, Carson City, and Minden, Nev., and points in Nevada which

<sup>3</sup> See Appendix B, p. 56, *infra*. The magnitude of PMT's present operations can be gauged somewhat by the fact that its certificate (Exhibit 30 in the Sub. 37 case before the Commission) consists of 78 sheets, and its 1956 gross revenue was over \$29 million.

<sup>4</sup> Although the broad authority granted by the Commission in the proceedings under review has become effective by virtue of the refusal of the District Court to grant a temporary restraining order, we shall, for clarity, refer to its "present" authority as that existing prior to the instant grant.

are stations on the lines of its rail parent, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif.<sup>5</sup>

By applications filed on various dates, PMT sought authorization to provide unrestricted motor contract carrier service as a transporter of new automobiles, new trucks and new buses, from and to the points shown:

SUB. No.	DATE FILED	ORIGIN	DESTINATION
34	10/14/55	Oakland, Calif.	Points in Oregon which are stations on the lines of PMT's rail parent.
35	3/5/56	Oakland, Calif.	Austin, Tonopah, and Yerington, Nev.
36	3/9/56	Raymer, Calif.	Points in Arizona which are stations on the lines of PMT's rail parent.
37	10/23/56	Oakland, Calif.	Points in Ariz., Idaho, Nev., N. M., Ore., Utah, and Wash.
		Raymer, Calif.	Points in Ariz., Idaho, Nev., N. M., Ore., Utah, and Wash., with specified exceptions.
		South Gate, Calif.	Points in Ariz., Idaho, Mont., Nev., Ore., Utah and Wash.

In the Sub. 34 and 35 cases, a Joint Board and examiner, after hearings, recommended that PMT's applications be granted, but the Commission, division 1, stayed the taking effect of the recommended orders, pending further order of the Commission. In the Sub. 36 and 37 cases, a joint board and examiner recommended that the applications be granted. While the latter two cases were pending on exceptions before the Commission, it issued its first report and order in the Sub. 34 case, approving

<sup>5</sup> See Appendix B, p. 56, *infra*. Its applications to secure these contract carrier rights were unopposed before the Commission.

the relatively limited authority sought. Upon petition, the Commission granted reconsideration in the Sub. 34 case and consolidated all four proceedings for disposition in one report. By its report and order dated September 9, 1958, the Commission authorized PMT to perform unrestricted motor contract carriage of automobiles and trucks as set forth in the appendix thereto. (See Appendix B, *infra*, p. 80) Undoubtedly, appellees will quarrel with our description of the service authorized as being "unrestricted" since the Commission, in each case, limited the service to points on the lines of PMT's rail parent. This limitation, while of considerable comfort to the rail protestants, since it prevented Southern Pacific from "invading" their territory, affords no solace whatever to the independent motor carrier protestants. Their contention regarding this facet of the case is well reflected by Commissioner Murphy, dissenting, Appendix B, *infra*, p. 78:

\* \* \* This limitation merely defines the territorial scope of this grant of unrestricted motor-carrier authority and is actually of little real substance since it will permit the applicant to provide service at a majority of the important traffic centers in the destination territory involved. To these points the service authorized will be wholly unrestricted and if such a grant is proper, simple logic requires a similar grant to off-line points sought by the applicant. The fact of the matter is, however, that a grant of unrestricted authority, regardless of its extent, is not justified on this record.

### THE QUESTIONS ARE SUBSTANTIAL

This proceeding involves the first instance in which the Commission has authorized the performance of substantial motor contract carrier operations by a railroad or its affiliate. The Commission's decision, buttressed by the opinion of the court below, unless reversed, will serve as a precedent for determination of all future contract



carrier applications by railroads and as a basis for their further entry into the field of unlimited truck service. The basic issue is the power of the Interstate Commerce Commission to authorize the performance of unrestricted motor-carrier service by a railroad subsidiary, in the absence of any special circumstances justifying such a grant of authority, and indeed, in the teeth of a finding by the Commission majority<sup>6</sup> that the record before it reflected "the absence of any showing of unusual conditions in these proceedings." Appendix B, p. 71, *infra*.

The District Court's finding, directly contrary to that of the Commission, that there was "substantial evidence of special circumstances" justifying the grant of authority to PMT (Appendix A, p. 34, *infra*) is based, in part, upon a misreading of the Commission's report. Thus, the Court held "that the Commission found that . . . use of any other carrier [than PMT]" would cause confusion and disarrange "operations at the plant, which are geared to use of PMT's services from its nearby yard." (Appendix A, p. 34, *infra*). The Court thus attributed to the Commission a finding which it did not make. The language of the Commission's report to which the Court referred is nothing more than a recitation of the contentions of the applicant and its supporting shipper and in no sense a finding of the Commission (Appendix B, p. 58, *infra*). The actual finding of the Commission on this point (*Ibid.*, p. 66) shows a total disagreement with the contentions of PMT and its supporting shipper, General Motors, and demonstrates the error of the District Court in attributing to the Commission the "finding" referred to:

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<sup>6</sup> The vote to authorize PMT to conduct unrestricted motor carrier service was five to four, with two Commissioners (Minor and Goff) not participating. Although Commissioner Walrath was absent and did not participate, his statement, Appendix B, p. 79, *infra*, clearly indicates that for all practical purposes he may be counted as dissenting.

\* \* \* The fact that both General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby to block the use by other carriers of normal egress routes, *has no bearing upon the adequacy or inadequacy of existing motor transportation facilities.*<sup>7</sup> (Emphasis supplied)

The court below also held (App. A, p. 34, *infra*) that other, routine, findings of the Commission, although not considered by it to constitute "unusual conditions" did, "in the court's opinion," constitute "special circumstances" justifying the authority sought. In the same portion of its opinion, the court states that "the order further shows that denial of the permit would cause substantial damage to the applicant, PMT." We can locate no such finding in the Commission's report. Indeed, its statement (App. B, p. 66, *infra*) that "it [is] unlikely that a significant amount of freight would be diverted from the Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points," directly refutes the court's statement. In short, since the Southern Pacific system would, in any event, retain the GM traffic to points on its lines, the mere fact that it would move in the parent railroad's cars, rather than its subsidiary's trucks, can hardly result in damage to PMT. In any event, it is clear that the court below, in finding "special circumstances" overruled the Commission's contrary holding that none existed. We respectfully submit that the court erred in so doing since its opinion nowhere discloses wherein the Commission's finding of "an absence of any showing of unusual conditions" was clearly erroneous.

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<sup>7</sup> Thus, in these proceedings the Commission, while acknowledging that PMT had failed to demonstrate that the services of existing independent motor carriers were in any way inadequate, a factor which it has consistently relied on in other application cases as grounds for denial of new authority, nevertheless went on to bestow favored treatment upon the rail subsidiary despite the important Congressional policy involved.

Also involved here is the question of whether the Commission must conform its administration in this field to the decisions of this Court or whether it is free to merely pay lip service to them, while substantively ignoring them. The Commission's action here complained of follows by less than a year this Court's decision in *American Trucking Assn's., Inc. v. U. S.*, 355 U. S. 141, hereinafter called the *A.T.A.* case. Although the Court there upheld the Commission's award of unrestricted truck authority to a rail subsidiary, we read its opinion as clearly restricting such grants to situations in which "special circumstances," justifying a departure from the Congressional policy against such grants, are shown to exist. The Commission's majority noted, in passing, that this Court in the *A.T.A.* case stated that "the underlying policy of section 5(2)(b) must not be divorced" from § 207 proceedings<sup>8</sup> and that "the Commission must take 'cognizance' of the National Transportation Policy and apply to Act 'as a whole.'" While it claimed to follow this mandate (Appendix B, p. 69, *infra*), appellants submit that the report, in substance, ignores both the Congressional policy and this Court's clear enunciation of the Commission's obligation set forth in the *A.T.A.* case, *supra*.

This Court's opinion in the *A.T.A.* case contains, (355 U.S. 152) the following significant statement:

Finally, if under our interpretation a "loophole" exists in the Act, the Commission has shown no inclination to permit its use as such. Should the Commission prove to be less stringent in the future, appellants not only have recourse to the Congress, but also to the courts for review of the Commission's finding that "special circumstances" exist.

<sup>8</sup> The Commission's report also holds, we think correctly, that the same principle applies where, as here, a contract carrier permit is sought by the rail subsidiary under § 209. Appendix B, p. 69, *infra*.

The above-quoted statement shows beyond peradventure that a finding by the Commission that "special circumstances" justify its action is a *sine qua non* to any grant by it of unrestricted motor rights to a railroad or its affiliate. Yet here, as stated, the Commission's report not only fails to find "special circumstances" but, indeed, contains an exactly contrary finding.

1. The National Transportation Policy provides for the preservation of the inherent advantages of each form of transportation. In *U. S. v. Rock Island Motor Transit Co.*, 340 U. S. 419, 427, this Court noted with approval the Commission's application of the Policy "so as to read the proviso [of § 5(2)(b)] into § 207 in order to preserve the inherent advantages of motor carrier service." The proviso, of course, requires that the Commission not allow railroads or rail affiliates to purchase motor operating rights except upon a finding, among others, that the transaction will enable the purchaser "to use service by motor vehicle to public advantage in its [rail] operations." The emphasized phrase has been translated by the Commission as empowering it to authorize so-called auxiliary and supplemental motor operations by railroads, but not, as here, all-out truck service, competitive with that of independent motor carriers and indeed, that of the railroads themselves. The one exception to the rule that the Commission may not authorize the performance of unrestricted truck service by railroads or their affiliates is contained in this Court's decision in the *A.T.A.* case, *supra*, upholding an I.C.C. grant of unrestricted truck service to a rail subsidiary, based upon—to use the Court's words—"special circumstances"<sup>9</sup> there found to exist. The special circumstances of that case—failure of independent motor carriers to supply adequate service to the small Iowa communities involved, 355 U. S., at 153—find no parallel in the record before the Commis-

<sup>9</sup> 355 U. S. 141, at 152.

sion here. Indeed, the one thing on which the Commission's majority and dissenters seem agreed upon is that such circumstances do not exist here. The Commission majority acknowledged that PMT failed to show any "unusual conditions," a finding concurred in by the dissenting Commissioners.<sup>10</sup> The protestant motor carriers in this case—far from being unwilling—are most anxious to serve the supporting shipper, General Motors Corporation. They are prevented from doing so, as noted by Commissioner Murphy (Appendix B, p. 77, *infra*), only by the "adamant refusal" of General Motors to use their services. The report under consideration (Appendix B, p. 58, *infra*) states:

Exceptants are authorized to conduct the proposed operations, have equipment suitable for the transportation of the shipper's vehicles, and are experienced in transporting the considered commodities.

Thus, despite a failure to find exceptional circumstances which would justify a grant of unrestricted motor authority to a railroad and despite the above-quoted finding which concedes that the protestant motor carriers are fit, willing and able to provide any service needed, the Commission allows a wholesale invasion of the motor carrier field by the rail subsidiary.<sup>11</sup> Why? Its only apparent justification for its extraordinary action is that "insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by the Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier \* \* \*." Appendix B, p. 67.

<sup>10</sup> Appendix B, p. 71, 76, and 77, *infra*.

<sup>11</sup> Commissioner Arpaia, dissenting (Appendix B, p. 76, *infra*) sums up the matter accurately: "In essence, the majority has not only failed to follow the Congressional policy but has misapplied the Congressional mandate. It has protected rail protestants against invasion and competition yet has failed to extend protection to the motor-carrier protestants."



*infra*. This reasoning is logically and legally fallacious, in view of the fundamental Congressional policy involved. If PMT is to be turned loose to perform all-out truck service, competitive both with independent motor carriers and its own rail parent, merely because the latter already transports the same traffic in rail service, then every railroad throughout the land is free to acquire similar motor authority to transport its choicest traffic for its largest shippers. Thus, the Congressional policy against unrestricted truck operations by railroads has been here downgraded by the Commission to an exercise in semantics! The Commission's action here overrules, *sub silentio*, its landmark *Barker* decision, *Pennsylvania Truck Lines, Inc.—Control—Barker*, 1 M.C.C. 101, decided October 8, 1936, holding (at p. 111) that Congress intended that railroad truck operations be restricted to service auxiliary to, rather than competitive with, rail service, and followed through the years in a long line of cases involving both § 5 and § 207 of the Act.

2. In addition to its failure to conform to Congressional policy and the decisions of this Court respecting rail entry into the field of unrestricted truck service, the Commission's report and order fails to carry out the Congressional policy evidenced by Section 210 of the Interstate Commerce Act. These provisions were designed to prevent carriers "from conducting operations as both a common and contract carrier, when the operations would be competitive as to commodities and territory." *Ziffrin, Inc. Contract Carrier Application*, 28 M.C.C. 683, 696. "The discrimination which the section is intended to obviate is always present when the same persons are able to offer both kinds of service in respect of the same commodities and between the same points." *Ibid.*, p. 698. The Commission's denial of dual authority in the cited case was upheld in *Ziffrin, Inc. v. U. S.*, 318 U. S. 73. The Commission's failure to require PMT to satisfy the requirements of § 210 is particularly glaring in view

of its criticism, in its first report in the Sub. 34 case, of PMT's reliance upon the fact that it had previously conducted dual operations without being charged "with any of the practices which section 210 is designed to prohibit." Said the Commission (Appendix C, p. 87, *infra*):

Applicant's plea \* \* \* is without merit. Each successive grant of common- or contract-carrier authority which would result in dual operations must, under the statute, be accompanied by a finding that such resultant dual operations will be consistent with the public interest and the national transportation policy. Each such finding must be based upon the circumstances existing at the time the particular grant is made, and each case must be decided on its own merits.

The same report also noted (Appendix C, p. 85, *infra*) that "even without the statutory requirements we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail."

Having thus been admonished, in the first Sub. 34 case, that the statute required introduction of evidence in future proceedings to satisfy the policy underlying Section 210, PMT, in the far broader Sub. 37 proceeding, presented no evidence whatever to support a finding that its dual operations would be conducted "consistently with the public interest and with the national transportation policy . . ." Instead, it merely relied upon the fact that it had conducted such operations in the past. The Commission's majority excuses this flagrant omission by PMT, and attempts to avoid the stricture of § 210, by restricting the rail subsidiary's common carrier certificates against the transportation of automobiles and trucks. This action, we submit, by no means cures the evil at which § 210 was aimed, and we can find no better language to make the point than that of Commissioner Murphy, dissenting (Appendix B, p. 79, *infra*):

• • • In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved, and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of section 210.<sup>12</sup>

3. The District Court, in upholding the Commission's award of unrestricted motor-carrier authority to the rail subsidiary, erred in its interpretation of the purpose of the recent amendments to Sections 203(a)(15) and 209 (b) of the Interstate Commerce Act. The purpose of the legislation, enacted as Public Law 85-163, 85th Cong., approved August 22, 1957, was to overcome this Court's decision in *U. S. v. Contract Steel Carriers, Inc.*, 350 U. S. 409, holding (p. 412) that a contract carrier "is free to aggressively search for new business within the limits of his license." The testimony of Commissioner Clarke before the Subcommittee of the Senate Committee on Interstate and Foreign Commerce, makes this clear. The Commissioner noted that "[f]reedom to solicit customers without restriction would tend to obliterate the distinction which Congress intended to make between common and contract carriers" and that enactment of the legis-

<sup>12</sup> The opportunity for practices which § 210 was designed to prevent is even greater than set forth by Commissioner Murphy. In addition to the dual service by PMT and its rail parent which he refers to, the record before the Commission shows that the railroad also serves General Motors' competitors in the automobile manufacturing field in the same general area.

lation would make clear "... that the transportation services furnished by such [contract] carriers are to be of a special and individual nature for one or a limited number of persons and which are not provided by common carriers." Hearings, p. 23. "A representative of the railroad industry stated that the legislation was needed to prevent "... the unregulated, unbridled growth of highly competitive contract carriage ..." Ibid, p. 267. This testimony and the reports of the respective committees (S. Rept. No. 703, H. Rept. No. 970, 85th Cong., 1st Sess.) establish that the purpose of the legislation was to restrict the business field of contract carriage. Certainly nothing in the amendments was in any way intended to alter the traditional Congressional policy against rail performance of unrestricted truck service. Thus that policy continues to apply to applications by railroads or their affiliates to perform motor contract carriage as well as motor common carriage.<sup>13</sup> But the court below, while conceding that the Commission had not imposed the restrictions generally imposed in motor common carrier grants to railroads "in the absence of special circumstances" (Appendix A, p. 37, *infra*) nevertheless went on to uphold the Commission's order on the ground that the authority granted was "restricted in many respects." Other than the futile limitation of PMT's common carrier certificates against transportation of the considered commodities—futile because of General Motors' oft-announced policy of using only contract carriage—the sole "restriction" imposed by the Commission was the limitation of service to points on the parent railroad's lines. This is a restriction in the most technical

<sup>13</sup> The District Court seems to find fault with the fact that most of the cases we cited to support this proposition "deal with orders under § 5(2)(b) or § 207 and administrative practice in interpreting and applying those sections." Appendix A, p. 37, *infra*. This is hardly surprising in view of the fact that the case under review involves the only instance so far of wholesale rail invasion of the truck field through the medium of contract carriage.

sense only, since no carrier of the commodities here involved is authorized to serve all points throughout the country. Bearing in mind the vast scope of the Southern Pacific rail system, it seems almost absurd to refer to a condition which limits service "only" to points thereon as a "restriction." In any event, neither the Commission, the intervening defendants, nor the court below contend that this so-called restriction limits PMT to the performance of auxiliary and supplemental service. The acceptance of the imposition by the Commission of this condition as compliance with its obligation under the Congressional policy involved, reduces that policy to the status of an empty gesture, and in addition, converts it from its true purpose, i.e., the protection of the independent motor carrier industry from invasion by unrestricted truck service conducted by railroads, to a policy devoted to protecting railroads from the invasion of their territory by other railroads. The court below took pains to point out that the Commission had complied with the provisions of amended § 209(b) in issuing the grant to PMT. Appendix A, p. 33, *et seq., infra*. While this might have been enough, had the applicant been other than a rail subsidiary, the court's decision fails to give appropriate consideration to that all-important fact and, by indirection, seems to have concluded that the amendments to the law somehow placed a motor contract carrier application by a rail affiliate in a different light than its application to perform motor common carriage. Indeed, if there is to be any distinction, it should be that a rail affiliate cannot perform *any* contract carriage. The Transportation Act of 1887 was designed to cure many evils in the nation's rail transport system. A paramount purpose was to eliminate discriminatory rates resulting from private contracts with powerful shipping interests. To effect fair and impartial treatment of all shippers, Congress limited railroads to the performance of common carrier service. Then, by the Motor Carrier



Act, 1935, Congress allowed rail entry into motor transportation only to the extent that such operations would be used "in its [rail] service." With the noted exception of "special circumstances," it has been consistently held that this restricts such motor operations to those which are an adjunct to rail service. Thus, the limitation prohibits railroad-controlled or affiliated motor carriers from engaging in operations beyond the scope of the railroads' operations. As railroads cannot perform contract carriage, it should follow that their motor subsidiaries cannot do so either.

4. The holding of a majority of the court below that plaintiffs lack standing to sue, is, we submit, clearly erroneous.<sup>14</sup> This holding stems from the fact that General Motors indicated that no matter what the outcome of the proceeding before the Commission, none of the protestant motor carriers would be given any of its business. It follows, say the intervening defendants, "that there is an absence of proof that the motor carrier plaintiffs have suffered or are threatened with damage or financial injury," and thus they lack standing to sue. Appendix A, p. 39, *infra*. This novel theory, adopted by the majority of the court below, has interesting and dangerous implications. It simply means that any applicant before the Commission may successfully preclude the possibility of court review, provided only that he can prevail upon his supporting shipper or shippers to announce, as General Motors here, that come what may, no protesting carrier will get any of its business. Thus, the majority below would deprive the plaintiff carriers of the opportunity to test in the courts the Commission's application of the provisions of the law expressly intended to prevent encroachment by railroads in the truck

<sup>14</sup> As noted by the court, Appendix A, p. 40, *infra*, this issue was not raised by the Commission but by the intervening defendants, PMT and General Motors Corp.

field. What the majority has done, then, is to hold that Congress has created a right without a remedy.<sup>15</sup> An example of the absurd results which follow from the majority's holding comes readily to mind. In the Commission's day to day administration of the law, it is constantly faced with applications to serve newly constructed plants. Does it follow, since no traffic has theretofore issued from such a plant, that a Commission order granting authority to one carrier but not another is immune from judicial review at the instance of the latter merely because the supporting shipper had stated that he would get none of his business in any event? The decision of the majority of the court below on this phase of the case gives to the current utterances of supporting shipper witnesses the same dignity as the ancient Medean law. Whatever else might be said, there is no reason, legally or factually, to assume that even General Motors might not change its mind. That this is possible was conceded even by its staunch ally, PMT, when it said:

\* \* \* Furthermore, there is nothing in this decision which would prevent General Motors, if it ever became dissatisfied with the service of Southern Pacific and PMT, from turning over this traffic to other available carriers, rail or motor, *including plaintiffs*. (Emphasis supplied)<sup>16</sup>

The cases cited by the majority below as supporting its conclusion will be seen, on analysis, to fall far short of so doing. *Atchison, T. & S. F. Ry. Co. v. U. S.*, 130 F. Supp. 76, affirmed *per curiam*, 350 U. S. 892, merely held that *rail protestants* before the Commission lacked standing to bring suit to contest its order approving a

<sup>15</sup> The applicable provisions of the Interstate Commerce Act and the National Transportation Policy are not self-enforcing. If parties such as the protestant motor carriers before the Commission may not bring court action to test the validity of its decisions, then who can?

<sup>16</sup> PMT's brief before the District Court, p. 24.

merger of *motor carrier* applicants. If the motor protestants before the Commission here had been seeking to block a merger of Southern Pacific with another railroad, the cited case would be in point. The other case, *Pittsburgh & W. Va. Ry. Co. v. U. S.* 281 U. S. 479, held only that one railroad, a minority stockholder in another road whose applications to abandon its station and use union terminal facilities in the same city had been approved by the Commission, had no standing to sue, in a three-judge court, to set aside the Commission's order. Said the Court (281 U. S. 487):

• • • This financial interest [as a minority stockholder] does not differ from that of every investor in Wheeling securities or from an investor's interest in any business transaction or lawsuit of his corporation. Unlike orders entered in cases of reorganization, and in some cases of acquisition of control of one carrier by another, [footnote citing cases omitted] the order under attack does not deal with the interests of investors.

If one of the protestants before the Commission here had been a stockholder of Southern Pacific who claimed that its venture, through PMT, into the field of motor contract carriage would cause it to lose money, the cited case would support the proposition that such stockholder lacked standing to sue to set aside the Commission's order. But the dissimilarities, both as to the status of the parties plaintiff and the issues involved, are so obvious that we submit the cited case in no way supports the holding of the majority below that plaintiffs had no standing to bring suit for review of the Commission's order.

**CONCLUSION**

The questions presented by this appeal are substantial and of public importance. For the reasons stated, it is urged that jurisdiction be noted and that the judgment of the District Court be reversed and the case remanded to that court for disposition consistent with this Court's opinion.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Peter T. Beardsley, one of the attorneys for appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the twenty-second day of May, 1959, I served copies of the foregoing document on the several parties thereto, as follows:

1. On the United States, by mailing copies, in duly addressed envelopes, with postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C., and Willard R. Memler, Esq., Department of Justice, Washington 25, D. C.

2. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Esq., Assistant General Counsel, at the offices of the Commission, Washington 25, D. C.

3. On Pacific Motor Trucking Co., intervening defendant, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert L. Pierce and William E. Meinhold, Esqs., 65 Market Street, San Francisco 5, California, and with postage prepaid, to Edward M. Reidy and Thormund A. Miller, Esqs., 205 Transportation Bldg., Washington 6, D. C.

4. On General Motors Corporation, intervening defendant, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Henry M. Hogan and Walter R. Frizzell, Esqs., 3044 West Grand Blvd., Detroit 2, Mich., and with postage prepaid, to Beverley S. Simms, Esq., 612 Barr Bldg., 910 17th Street, N. W., Washington 6, D. C.

PETER T. BEARDSLEY



## APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
 THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCK-  
 ING ASSOCIATIONS, INC.,  
 NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION,  
 CONVOY COMPANY,  
 ROBERTSON TRUCK-A-WAYS, INC.,  
 HADLEY AUTO TRANSPORT,  
 B & H TRUCKAWAY,  
 WESTERN AUTO TRANSPORTS, INC., and  
 KENOSHA AUTO TRANSPORT CORP.,

*Plaintiffs,*

v.

UNITED STATES OF AMERICA and  
 INTERSTATE COMMERCE COMMISSION,

*Defendants,*

and

PACIFIC MOTOR TRUCKING COMPANY and  
 GENERAL MOTORS CORPORATION,

*Intervening Defendants.*

## OPINION.

Before BASTIAN, Circuit Judge, and KEECH and CURRAN,  
 District Judges, sitting as a statutory three-judge court.

KEECH, District Judge:

This is an action by certain motor carrier trade asso-  
 ciations and motor carriers to set aside an order of the

Interstate Commerce Commission entered September 9, 1958, which directed the issuance, under certain conditions, of motor contract carrier permits under § 209(b) of the Interstate Commerce Act [49 U.S.C. § 309(b)] authorizing Pacific Motor Trucking Company of San Francisco, California, to transport automobiles and trucks, except trailers, in initial movements in truckaway and/or driveaway service, from plants of the General Motors Corporation at Oakland, Raymer, and South Gate, California, to certain named off-rail points in Nevada, and to all points in Oregon, Nevada, Utah, Arizona, and New Mexico which are stations on the rail lines of the Southern Pacific Company.

Pacific Motor Trucking Company (hereinafter referred to as PMT) is a wholly owned motor carrier subsidiary of Southern Pacific Company (hereinafter referred to as SP), which operates an extensive railroad system in Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

PMT since December 10, 1935, has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and driveaway service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub 23, issued June 20, 1944); (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub 27, issued April 21, 1950); (3) from Raymer, California, to points in the Los Angeles Harbor Commercial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950); and (4) from Oakland, California, to Carson

City and Minden, Nevada, both being non-rail points (MC 78787, Sub 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications involved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California.

The order complained of grew out of extensive proceedings before the Commission following the filing of the four applications by PMT, seeking to extend its service as a contract carrier for GM in the Pacific Coast area for the transportation of a single commodity, new automobiles and trucks. In general, by the Sub 34 application, PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, California, to all Oregon points which are stations on SP; by the Sub 35 application, the right to serve three additional non-rail points in Nevada from Oakland, California; by the Sub 36 application, to serve all Arizona points which are stations on SP; and by the Sub 37 application, authority to round out its service areas from the Oakland and Raymer plants to include all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico, whether or not they are stations on SP, and to begin new service from the Buick-Oldsmobile-Pontiac plant at South Gate, California, to a seven-state area, namely, Washington, Oregon, Idaho, Nevada, Utah, Arizona, and Montana. The four sub-proceedings were finally consolidated in Sub 37, from which the order complained of emanated. All of the plaintiffs in this action, who had been protestants in one or more of the other sub-numbers, participated in the consolidated proceeding before the Commission.

By the order here under attack, the Commission granted the authority sought in the Sub 35 proceeding, service

from the Oakland plant to three additional non-rail points in Nevada, which had been opposed by only one protestant, not a party to this action; but as to the Sub 34, 36, and 37 applications, the Commission denied entirely the authority requested to serve destinations in states not served by SP (Washington, Idaho, and Montana) and limited the authority granted to destinations in the other states (Arizona, Nevada, Oregon, Utah, and New Mexico) to points located on the rail lines of SP. Thus, the Commission's order granted only a limited portion of the authority sought in the four applications, and issuance of the new permits thereunder was conditioned on curtailment of existing common carrier authority to transport automobiles and trucks.

This action to set aside the Commission's order and for a temporary restraining order and for interlocutory and permanent injunction against issuance of the permits authorized thereby, was brought under the provisions of § 205(g) of the Interstate Commerce Act [49 U.S.C. § 305(g)], § 10 of the Administrative Procedure Act [5 U.S.C. § 1009], and §§ 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code [28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325]. The plaintiffs' motion for a temporary restraining order was denied after hearing. On November 24, 1958, permits for the operations authorized by the order were issued by the Commission. The prayer for injunction was thereafter abandoned, and the cause is now before this statutory three-judge court for a determination on the merits.

The plaintiffs American Trucking Associations, Inc., The Contract Carrier Conference of American Trucking Associations, Inc., and National Automobile Transporters Association are motor carrier trade associations. The plaintiffs Convoy Company, Robertson Truck-A-Ways, Inc., Western Auto Transports, Inc., and Kenosha Auto Transport Corp., are motor common carriers authorized

to operate in one or more of the states affected by the extensions of Pacific Motor Trucking Company's contract operations authorized by the order. Robertson holds common carrier authority to transport automobiles and trucks, in initial movements, in truckaway service from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon. The plaintiffs Hadley Auto Transport and B & H Truckaway are motor contract carriers. Hadley is authorized to transport in initial movements, in truckaway service, automobiles from points in Los Angeles County, California, which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah. B & H is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, California, an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements from Vernon to points in Utah, Idaho, Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone.

The United States and the Interstate Commerce Commission were named defendants. The United States was represented at the hearing on the motion for a temporary restraining order, and thereafter an answer was filed on its behalf stating:

"... the United States does not participate in the defense of the Commission's order but does not oppose its defense."

There has been no further participation by the United States in the proceedings.

<sup>1</sup> This is of particular significance in view of the fact that the United States on occasion has seen fit to oppose actively orders of the Interstate Commerce Commission.



Pacific Motor Trucking Company and General Motors Corporation sought leave to intervene on behalf of the defendants. Their requests were granted, PMT, the applicant, and GM, the sole shipper involved, being the parties who would be most affected if the Commission's order should be set aside.

The question presented by this action is, to summarize, whether the Commission erred in authorizing extension of PMT's existing contract carrier authority to serve a single shipper, GM, and to transport a single commodity, new automobiles and trucks, from three GM plants in California to points within five western states which are stations on the rail lines of PMT's parent railroad, SP.

The plaintiffs challenge the order, contending the Commission erred in the following respects:

- "1. It ignored the provisions of the National Transportation Policy applicable in proceedings of the type under consideration;
- "2. It ignored the mandate of the proviso of § 5(2)(b) [of the Interstate Commerce Act] which it must observe in cases of this kind except where special circumstances, not here present, justify an exception to the Congressional policy against performance of unrestricted truck service by railroads or their affiliates;
- "3. It failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review;
- "4. It failed to conform to the Congressional policy manifested by § 210 of the Interstate Commerce Act against dual operations."

Counsel for both sides agree as to the scope of judicial review permitted in such a case as this, namely, that an order of an independent body such as the Interstate Commerce Commission is not to be disturbed if the order is within the scope of the statute which the Commission

is authorized to administer and enforce, and is based upon adequate findings, which are supported by substantial evidence in the record. Counsel also recognize that this is so even though the court should disagree with the Commission's conclusion, since the Act is not rigid and confides broad discretion in the Commission. It is, therefore, the function and duty of this court to determine whether the order here under consideration comes within the prescribed legal limits.

Plaintiffs differ with the defendant Commission and the intervenors, PMT and GM, as to what are the statutory limits of the Commission's authority applicable to granting of contract carrier authority to a motor carrier which is the wholly owned subsidiary of a railway.

The basic statute which governs the issuance of motor contract carrier permits is § 209(b) of the Interstate Commerce Act [49 U.S.C. § 309(b)], as amended by the Act of August 22, 1957, Pub. 85-163, 71 Stat. 411.<sup>2</sup> See

<sup>2</sup> "209(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require." Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit

tion 209(b) in terms provides that issuance of such permits shall be subject to the limitation on issuance of dual contract and common carrier authority contained in § 210 of the Act [49 U.S.C. § 310]. Further, the Act must be read as a whole and the various sections interpreted and applied in the light of the national transportation policy<sup>3</sup>

would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6); *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require; *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203(a)(15), as in force on and after the effective date of this proviso."

<sup>3</sup> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to

and the policy underlying § 5(2)(b) [49 U.S.C. § 5(2)(b)].<sup>4</sup> It is not questioned that PMT's past operations for GM, as well as the extended operations authorized by the order, are those of a contract carrier by motor vehicle, as defined by § 303(a)(15), as amended August 22, 1957 [49 U.S.C. § 303(a)(15)].<sup>5</sup> Nor is there any question that the Commission had authority under § 209(b) to issue permits for the extended contract carrier operations, unless such permits to PMT, as a subsidiary of SP, were in violation of some other statutory provision.

The plaintiffs admit that there is no express provision prohibiting this grant of authority to PMT, but contend that the grant to a wholly owned motor carrier subsidiary of a railroad of "unrestricted" authority to engage in common carrier operations in competition with independent motor carriers, is contrary to the public interest and national transportation policy as heretofore applied by the Commission and interpreted by decisions of the courts, including the Supreme Court.

encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." Act of Sept. 18, 1940, c. 722, Title I, § 1, 54 Stat. 899.

<sup>4</sup> *American Trucking Associations v. United States*, 355 U.S. 141, 151-2 (1957).

<sup>5</sup> "(15) The term 'contract carrier by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) of this section and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

The first question which must be resolved is therefore: How is § 209(b) to be interpreted in the public interest and in the light of the national transportation policy? Section 209(b) in terms provides:

" . . . In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

The plaintiffs in their brief contended that this amendment of § 209(b) "has no bearing on the issues" in the instant case. During the oral argument counsel for plaintiffs admitted that this amendment of the statute was in effect and binding on the Commission at the time it issued the order complained of, but argued that it had no application to the factual situation involved in the order here under consideration. Plaintiffs argued that the legislative history of this provision shows that the reason for its adoption was to nullify the decision of the Supreme Court in *United States v. Contract Steel Carriers, Inc.*, 350 U.S. 409, 412, approving the right of contract carriers to seek new business to an extent that the carrier might become a common carrier in fact, remaining a contract carrier in name only. The effect of the court decision was remedied by a second sentence inserted in § 209(b) by the 1957 amendment; and whatever may have been the original reason for instituting the legislation which culminated in the 1957 amendment, § 209(b), as it read at the time the Commission issued this order, clearly directed consideration by the Commission of certain specific criteria in applying public interest and the national transportation policy to authorization of contract carrier permits.



The order here challenged shows on its face that the Commission did consider those criteria, making findings with respect to each of them.

As to the number of shippers to be served by the applicant and the nature of the service proposed, the Commission found the evidence established that PMT's sole purpose was to afford GM extended driveaway and truck-away transportation of new cars and trucks from GM's plants at Oakland, Raymer, and South Gate, California, and that PMT's equipment was to be assigned to the exclusive use of that shipper.

As to the effect of granting the permit upon the services of protesting carriers, both rail and motor, the Commission made detailed findings as to the amount of GM traffic theretofore handled, or not handled, by the protesting carriers, both rail and motor. Careful consideration was given to the probable loss of GM traffic by rail carriers in joint-line service with SP, if authority were granted to PMT to serve points beyond SP's line, and the probable loss to a motor carrier presently serving GM dealers in Washington and Alaska, if PMT should be authorized to operate within the State of Washington. The Commission also weighed the effect on other independent motor carriers, both common and contract, authorized to serve any of the areas affected by the proposed extension of authority. It found that Hadley, one of the two protesting contract carriers, was dedicated to serving Ford, GM's largest competitor, that B & H, the other protesting contract carrier, possessed limited authority for operations from Vernon, California, and had in the past served Studebaker-Packard, and that Robertson, a common carrier protestant, transported vehicles principally for Chrysler.

As to the effect denial of the permit would have upon the applicant and the shipper and the changing character of the shipper's requirements, the Commission found that

the shipper, GM, had established its need for extension of the personalized type of contract service which PMT had been rendering it, and rendering well, from other points for many years; that in view of the limited storage facilities maintained by GM at its plants, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers; that use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant, which are geared to use of PMT's services from its nearby yard. The proposed extension of service was supported by GM in order to obtain faster transportation on shipments requiring expedited handling, direct deliveries to dealers at off-rail points, more flexible and expeditious handling of consolidated shipments, and to meet the competition of other automobile manufacturers, notably Ford and Chrysler, which have motor services available. The Commission further found that, should the requested authority be denied, GM had indicated it would not use the services of the protesting motor carriers, but either would support an application for similar authority by an independent motor contract carrier presently serving a GM branch plant at Arlington, Texas, or would institute proprietary operations. The order further shows that denial of the permit would cause substantial damage to the applicant, PMT, which has dedicated its contract carrier service to GM operations for many years, acquiring special equipment to meet GM's needs, and that PMT's contract carrier operations for GM during the years 1953 through the first eleven months of 1956 averaged 86.35% of PMT's total contract carrier operations. Thus, although the Commission found an "absence of unusual conditions" which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances

justifying the extensions of PMT's contract carrier authority to serve GM.

All of the Commission's findings and conclusions are supported by substantial evidence in the record before it.

The plaintiffs contend that any grant of contract carrier authority to a motor carrier subsidiary of a railroad must be limited to operations which are "auxiliary or supplemental" to the rail operations, the test applied by the Commission in permitting unification, merger, or acquisition of control of a motor carrier by a railroad under § 5(2)(b); that such authority must be limited further by the five restrictions generally applied by the Commission, in the absence of special circumstances, in granting common carrier authority under § 207 to a motor carrier subsidiary of a railroad; and that such authority is subject to the prohibition against dual common and contract carrier authority under § 210.

The Commission denies that the limitations which it has administratively adopted in applying § 207 and § 5(2)(b) are applicable to the issuance of contract carrier permits under § 209, pointing out that it has already been determined in the *American Trucking Association* case, *supra*, 355 U.S. at 149-150, that § 5(2)(b) is not a right limitation upon issuance of common carrier permits under § 207, although the Act is to be read as a whole and the Commission properly considered the underlying policy of § 5(2)(b) as a "guiding light" in the exercise of its discretion under § 207. The Commission points out further that to apply to a § 209(b) contract carrier permit the five restrictions generally placed upon a § 207 common carrier certificate in the case of a motor carrier subsidiary of a railroad, would convert the contract carrier into a common carrier; and that the § 210 ban on dual operations applies to common and contract carriage by the same motor carrier or affiliated motor carriers, and.

does not deal with dual operations by a railway and its motor carrier subsidiary.

The Commission concedes that the rationale which requires a reading of the Act as a whole and consideration of the policy underlying § 5(2)(b) as a guiding light in the issuance of § 207 common carrier certificates is equally applicable to the granting of § 209(b) permits for contract carrier operations. It contends that it did apply, insofar as practicable in dealing with an application for contract carrier authority, the policies underlying § 5(2)(b), § 207, and § 210, as well as the specific criteria laid down by the Congress in its 1957 amendment of § 209(b) for determining whether issuance of a contract carrier permit is consistent with the public interest and the national transportation policy.

That the Commission did apply the Act as a whole, giving effect to the policies underlying §§ 5(2)(b), 207, and 210, as well as carefully following the guide laid down by the Congress in § 209(b) for determining public interest and compliance with the national transportation policy, is borne out not only by the findings of fact recited in the Commission's order, but by its conclusions as to the scope of extended operations which would be in the public interest, and by the curtailed authority which the Commission granted.<sup>6</sup> It will be observed that

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<sup>6</sup> " . . . We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand, use by General Motors of appli-

the requested authority was denied where it would encroach upon existing service by other carriers, and granted where the evidence of record showed that the proposed extension would have little or no effect upon present and future operations of the protestants.

True, the authority granted PMT by the Commission's order was not subject to all five of the restrictions which the Commission has generally, in the absence of special circumstances, seen fit to impose on *common* carrier certificates to motor carriers which are railway affiliates. The extended operations authorized, however—far from being "unrestricted" operations by PMT in the contract carrier field, as the plaintiffs have consistently referred to them—were restricted in many respects. The authority granted was limited to points already served by SP (so as not to affect adversely other railroads carrying GM traffic beyond SP to other rail points), and limited to points on the rail line of SP (so as not to cut in on territory which potentially might be served by inde-

cant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. . . . insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. . . . It is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers." (I.C.C. Order, Sheets 23-25.)



pendent motor carrier protestants), subject to the condition that "the permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks" in its outstanding common carrier certificates (in the interest of avoiding the possibility of dual motor carrier operations), and the further condition "that there may from time to time in the future be attached to the permits granted such reasonable terms, conditions and limitations as the public interest and national transportation policy may require."

The court finds that the Commission's order violates no statutory prohibition, either in letter or in spirit, and that the authority granted thereby to PMT is in the public interest and in keeping with the national transportation policy, affording the shipper adequate, economical, and efficient service in a specialized field, and at the same time effecting no encroachment on the operations of other carriers or transportation media. Thus, the court finds without merit plaintiffs' allegations of error numbered 1, 2, and 4.

As to the plaintiffs' third allegation of error, that the Commission failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review, the plaintiffs have pointed to no case determinative of the particular question here involved. Most of the cases cited deal with orders under § 5(2)(b) or § 207 and administrative practice in interpreting and applying those sections. At the argument, plaintiffs relied principally on the Supreme Court's decisions in *United States v. Rock Island Motor Transit Company*, 340 U.S. 419 (1951), and *American Trucking Associations, Inc. v. United States*, 355 U.S. 141 (1957), affirming 144 F. Supp. 365. In both cases the Supreme Court upheld the Commission's administrative interpretation and application of § 207 in the light

of the policies underlying the Interstate Commerce Act as a whole and the national transportation policy. In the *Rock Island* case, the Court approved the Commission's imposition of five restrictions administratively adopted to insure that common carrier operations by a railway affiliate under a § 207 certificate would be "auxiliary and supplemental" to the rail operations in the absence of special circumstances justifying broader authority in the public interest, holding that the modification was authorized by the Commission's reservation, in the original § 207 certificate, of power to impose such further restrictions as subsequently might appear necessary. In the *American Trucking Associations* case the Court merely held that the Commission, in granting a § 207 common carrier certificate, had correctly given consideration to the policy underlying § 5(2)(b), although the latter section did not constitute a rigid limitation on § 207 certificates. The court finds the Commission's order in the instant case in harmony with the rulings in those cases.

For the foregoing reasons, the court concludes that the Commission in authorizing the extended operations by PMT acted within the limits of its statutory authority and did not exercise its discretion arbitrarily or capriciously; hence, the Commission's order must be upheld on the merits.

The intervenors have raised a further question, namely, the standing of the plaintiffs to bring this action. The intervenors contend that the complaint shows upon its face that none of the association plaintiffs is a "party in interest" authorized by § 205(g) of the Interstate Commerce Act [49 U.S.C. § 305(g)] to seek judicial review, or the equivalent "person suffering legal wrong because of any agency action" within § 10 of the Administrative Procedure Act [5 U.S.C. § 1009] and, further, that the complaint fails to include any allegation and there is an absence of proof that the motor carrier plaintiffs have

suffered or are threatened with damage or financial injury as the result of the Commission's order, so as to make them parties in interest entitled to bring suit. The intervenors urge that neither mere concern for obedience to law nor the mere possibility of stronger competition by virtue of the grant of new operating authority is sufficient to give the plaintiffs standing to bring this action to set aside the Commission's order, and that to constitute a "party in interest" under § 205(g) a plaintiff must show that some definite legal right possessed by him has been directly damaged or seriously threatened by the order. *Atchison, Topeka, and Santa Fe Railway Co. v. United States*, 130 F. Supp. 76, affirmed *per curiam* 350 U.S. 892 (1955). They point out further that the fact that the plaintiffs were permitted to intervene before the Commission does not alone furnish a basis for plaintiffs' required "interest". *Pittsburgh & W. Va. Ry. Co. v. United States*, 281 U.S. 479 (1930).

The defendant Interstate Commerce Commission did not raise the issue of standing, and the question was argued by the intervenors after the court had heard the case on the merits.

A majority of the court find that the association plaintiffs obviously are not persons possessed of some legal right directly and adversely affected by the administrative action, entitling them to bring an action to set aside the Commission's order. The majority further find that, not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of the extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to institute this action. Had the complaint been filed by some qualified "party in interest," all of the plaintiffs would have had the right to

intervene under the provisions of 28 U.S.C. § 2323;<sup>7</sup> but the right to intervene presupposes the existence of an action brought by a proper plaintiff. Since none of the plaintiffs has alleged or shown standing to bring the action under the statutes providing for judicial review of the Commission's orders, it is the view of Judges Keech and Curran that the complaint must be dismissed on the further ground that plaintiffs lack standing to sue.

Judge Bastian concurs in so much of this opinion as deals with dismissal of the complaint on the merits.

Counsel will present an appropriate order dismissing the complaint (1) on the merits and (2) for lack of standing to sue.

/s/ WALTER M. BASTIAN, Circuit Judge.

/s/ RICHMOND B. KEECH, District Judge.

/s/ EDWARD M. CURRAN, District Judge.

January 20, 1959.

<sup>7</sup> 28 U.S.C. § 2323, third paragraph:

"Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections [section 2321 of Title 28 and sections 20, 23, and 43 of Title 49] may intervene in said action at any time after commencement thereof."

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCK-  
ING ASSOCIATIONS, INC.,  
~~NATIONAL~~ AUTOMOBILE TRANSPORTERS ASSOCIATION,  
CONVOY COMPANY,  
ROBERTSON TRUCK-A-WAYS, INC.,  
HADLEY AUTO TRANSPORT,  
B & H TRUCKAWAY,  
WESTERN AUTO TRANSPORTS, INC., and  
KENOSHA AUTO TRANSPORT CORP.,

*Plaintiffs,*

v.

UNITED STATES OF AMERICA and  
INTERSTATE COMMERCE COMMISSION,

*Defendants,*

and

PACIFIC MOTOR TRUCKING COMPANY and  
GENERAL MOTORS CORPORATION,

*Intervening Defendants.*

JUDGMENT

The above-entitled cause came on for hearing before this statutory three-judge District Court on December 10, 1958, and the court having considered the pleadings, briefs, and oral argument on behalf of the parties, and having filed on January 20, 1959, its opinion on the issues presented,

*It is hereby ordered, adjudged and decreed, that the complaint of the plaintiffs be, and it is hereby, dismissed*



(1) on the merits, and (2) for lack of standing of the plaintiffs, or any of them, to bring this action; and the clerk is hereby directed to enter judgment for the defendants and intervening defendants, this 30th day of January, 1959.

/s/ WALTER M. BASTIAN, Circuit Judge.

/s/ RICHMOND B. KEECH, District Judge.

/s/ EDWARD M. CURRAN, District Judge.

## APPENDIX B

## INTERSTATE COMMERCE COMMISSION

No. MC-78787 (Sub-No. 34)<sup>1</sup>

PACIFIC MOTOR TRUCKING COMPANY  
EXTENSION—OREGON

*Decided September 9, 1958*

1. Upon reconsideration, in No. MC-78787 (Sub-No. 34), findings in prior report, 71 M. C. C. 561, affirmed. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks, except trailers, in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to named points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. In No. MC-78787 (Sub-No. 35), operation by applicant as a contract carrier by motor vehicle of automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified plant site in Oakland, Calif., to Austin, Tonopah, and Yerington, Nev., over irregular routes, found consistent with the public interest and the national transportation policy.

<sup>1</sup> This report also embraces No. MC-78787 (Sub-No. 35), Pacific Motor Trucking Company Extension—New Motor Vehicles to Additional Nevada Points; No. MC-78787 (Sub-No. 36), Pacific Motor Trucking Company Extension—New Motor Vehicles, Raymer, Calif., to Arizona; and No. MC-78787 (Sub-No. 37), Pacific Motor Trucking Company Extension—Automobiles—California Assembly Plants to Seven Western States.

3. In No. MC-78787 (Sub-No. 36), operation by applicant as a contract carrier by motor vehicle of automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified plant site in Raymer, Calif., to named points in Arizona, found consistent with the public interest and the national transportation policy.
4. In No. MC-78787 (Sub-No. 37), operation by applicant as a contract carrier by motor vehicle, in initial movements, in truckaway and driveaway service, (1) of automobiles and trucks, except trailers, (a) from a specified plant site in Oakland, Calif., to named points in Arizona, New Mexico, and Utah and (b) from a specified plant site in Raymer, Calif., to named points in Nevada, New Mexico, Oregon, and Utah, and (2) of automobiles, in truckaway and driveaway service, from a specified plant site in South Gate, Calif., to named points in Arizona, Nevada, Oregon, and Utah, found consistent with the public interest and the national transportation policy.
5. Holding by applicant of the permits authorized herein and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.
6. Issuance of the permits authorized herein approved upon compliance by applicant with certain conditions, and applications in all other respects denied.

*William Meinhold, Stanfield Johnson, Thormund M. Miller, Robert L. Pierce, and Edward M. Reidy* for applicant.

*Walter R. Frizzell* for intervener in support of the applications No. MC-78787, subnumbers 35, 36, and 37.

*Henry M. Hogan* for same intervener in No. MC-78787 (Sub-No. 36) and No. MC-78787 (Sub-No. 37).

*Phil Jacobson, Peter T. Beardsley, Fritz R. Kahn, G. G. Andersen, R. W. Cronon, John J. Burchell, Frank S.*

*Farrell, Clair G. Anderson, Louis E. Smith, Marvin Handler, Walter N. Bieneman, Clarence D. Todd, Charles W. Singer, Joseph E. Earp, and Charles B. Myers* for protestants and interveners in opposition.

*John G. Lyons* for intervener in opposition in No. MC-78787 (Sub-No. 34), and as its interests might appear in No. MC-78787, sub-numbers 35, 36, and 37.

*Reginald L. Vaughn* for intervener as its interest might appear in No. MC-78787 (Sub-No. 37).

#### REPORT OF THE COMMISSION ON ORAL ARGUMENT<sup>2</sup>

##### BY THE COMMISSION:

These 4 related applications were orally argued on a consolidated record and will be disposed of here in 1 report. The No. MC-78787 (Sub-No. 35) and No. MC-78787 (Sub-No. 36) applications were heard on a consolidated record, and the No. MC-78787 (Sub-No. 34) and No. MC-78787 (Sub-No. 37) applications on separate records. The title proceeding has been subject of a prior report on oral argument, 71 M. C. C. 561.

No exceptions were filed to the examiner's recommended order in the No. MC-78787 (Sub-No. 35) proceeding but it was stayed by us. The No. MC-78787 (Sub-No. 36) and No. MC-78877 [sic] (Sub-No. 37) applications have been subject of recommended reports, to which exceptions and replies have been filed. General Motors Corporation, hereinafter called General Motors, supports, and American Trucking Associations, Inc., and Contract Carrier Conference of American Trucking Associations, Inc., hereinafter called ATA and the conference, respectively, oppose the applications. Our conclusions differ slightly from those recommended in each proceeding. Exceptions, contentions, and requested findings not discussed in this

<sup>2</sup> On reconsideration and oral argument in the title proceeding.

report nor reflected in our findings or conclusions have been considered and found not justified.

By the title application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet plants Nos. 1 and 2 in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, hereinafter called Southern Pacific, over irregular routes.

In the No. MC-78787 (Sub-No. 35) application filed March 5, 1956, as amended, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, from Oakland, Calif., to Austin, Tonopah, and Yerington, Nev., over irregular routes. Dallas & Mavis Forwarding Co., Inc., opposed this application at the hearing.

By its No. MC-78787 (Sub-No. 36) application filed March 9, 1956, as amended, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, except trailers in initial movements, in truckaway and driveaway service, from Raymer, Calif., to points in Arizona which are stations on the rail lines of the Southern Pacific, over irregular routes. Robertson Truck-A-Ways, Inc., a motor common carrier, and two motor contract carriers, B & H Truckway and Hadley Auto Transport, hereinafter called Robertson, B & H, and Hadley, respectively, oppose this application.



In the No. MC-78787 (Sub-No. 37) application filed October 23, 1956, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle (1) of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the sites of the General Motors Chevrolet plants at Oakland, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Oregon and Nevada which are stations on the rail lines of Southern Pacific, and except Carson City, Minden, Austin, Tonopah, and Yerington, Nev., and (b) from the site of the General Motors Chevrolet plant at Raymer, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Arizona which are stations on the rail lines of the Southern Pacific; and (2) new automobiles, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Buick-Oldsmobile-Pontiac plant at South Gate, Calif., to points in Arizona, Idaho, Montana, Nevada, Oregon, Utah, and Washington, over irregular routes. Nine carriers by railroad, nine motor carriers, and National Automobile Transporters Association, hereinafter called NATA, oppose the application. Insured Transporters, Inc., intervened as its interest might appear in all proceedings.

#### PRELIMINARY DISCUSSION

No. MC-78787 (Sub-No. 34).—In the prior report in the No. MC-78787 (Sub-No. 34) application we found that applicant should be granted a permit authorizing the transportation of automobiles and trucks, in initial movements, in truckaway service, from the site of General Motors Corporation's plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific, over irregular routes; and that the holding by applicant of such permit and those heretofore

issued to it, and of certificates heretofore issued to it authorizing motor common carrier operations in the same territory, would be consistent with the public interest and the national transportation policy. Thereafter, upon petitions of ATA and the conference, to which applicant replied, we reopened this proceeding for reconsideration on the present record solely with respect to whether the motor contract carrier authority granted therein should be made subject to the substituted-service restrictions usually imposed in certificates issued to rail carriers or motor affiliates of rail carriers. Subsequently this proceeding and the three other applications covered by this report were the subject of oral argument.

In their petitions in the No. MC-78787 (Sub-No. 34) proceeding and on oral argument, ATA and the conference contend (1) that the policy laid down by the Congress of restricting the motor-carrier operations of rail carriers or their subsidiaries to service which is auxiliary to and supplemental of rail service, as indicated in section 5 (2) (b) of the Interstate Commerce Act, consistently has been recognized by the Commission as being applicable to applications for common-carrier authority filed under section 207, and should be recognized as being equally applicable to requests for contract-carrier authority filed under section 209; and (2) that the Commission is without statutory sanction to allow railroads or their affiliates to perform unrestricted motor contract-carrier service; i. e., service which is not auxiliary to or supplemental of train service, whether the authority to perform such service is obtained through the medium of purchase under section 5 (2) (b) or as the result of an application filed under section 209. In reply applicant maintains that all issues arising under section 209 have been determined in the administrative consideration of the No. MC-78787 (Sub-No. 34) application, and that approval of unrestricted authority would be in

conformity with prior decisions<sup>3</sup> of the Commission granting it similar authority.

No. MC-78787 (Sub-No. 35)<sup>4</sup> and No. MC-78787 (Sub-No. 36).—The examiner recommended that the No. MC-78787 (Sub-No. 35) application be granted, but restricted the origins to be served to the sites of the General Motors Chevrolet plant in Oakland. No exceptions were filed to the order recommended by the examiner, but it was stayed by division 1, in order to give consideration to the question of dual operations.

The joint board recommended that the No. MC-78787 (Sub-No. 36) application be granted, but with service at origin restricted to the plant site of the General Motors Chevrolet plant at Raymer. On exceptions, the opposing motor carriers urge that the board erred (1) in failing to find that there are existing motor carriers authorized and equipped to render the proposed service, (2) in recommending that applicant be granted authority to serve only those Arizona consignees at rail points, thereby discriminating against consignees at other points, (3) in recommending that driveaway service be authorized because no need therefor has been shown, (4) in finding that existing carriers would not be prejudiced by the recommended grant of authority, (5) in concluding that a grant of the application is justified since a denial would result in the continued movement of the traffic by the Southern Pacific, and (6) in predicated such grant upon the fact that the Southern Pacific maintains shipping

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<sup>3</sup> *Pacific Motor Trucking Co. Extension—Automobiles*, 42 M. C. C. 911 (1943); No. MC-78787 (Sub-No. 27), *Pacific Motor Trucking Co. Extension—New Automobiles*, 51 M. C. C. 860 (1950) (not printed in full), decided March 10, 1950; No. MC-78787 (Sub-No. 30), *Pacific Motor Trucking Co. Extension—Raymer*, 51 M. C. C. 861 (1950), (not printed in full), decided May 15, 1950; and No. MC-78787 (Sub-No. 31), *Pacific Motor Trucking Co. Extension—Carson City*, 63 M. C. C. 851 (1955) (not printed in full), decided March 7, 1955.

facilities adjacent to the plant site. In a joint reply applicant and General Motors aver that the evidence supports the board's recommendation and urge that it be approved.

No. MC-78787 (Sub-No. 37).—In the No. MC-78787 (Sub-No. 37) application the examiner recommended a grant of contract-carrier authority to transport (1) automobiles, trucks, and buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the site of the General Motors Chevrolet plant No. 1 at Oakland to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Chevrolet plant at Raymer to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors' Buick-Oldsmobile-Pontiac Plant at South Gate to points in Arizona, Nevada, Oregon, and Utah, over irregular routes, with service restricted in each instance to points which are stations on the rail lines of the Southern Pacific.

Applicant and General Motors filed exceptions to the recommended partial denial of this application, and the opposing rail carriers separately, and Convoy Company, Western Auto Transports, Inc., and Kenosha Auto Transport Corporation, hereinafter called, respectively, Convoy, Western, and Kenosha, jointly replied. The contentions advanced by these parties on oral argument are for all practical purposes the same as those set forth in the last-mentioned exceptions and replies. Applicant asserts that the examiner erred in denying authority to points which are off the rail lines of the Southern Pacific and in failing to grant authority to all points covered by this application. Specifically, it argues (1) that the traffic involved accounts for only an insignificant fraction of the total operating revenues of the rail carriers connecting with the Southern Pacific, (2) that there is

nothing of record to indicate that a grant of the authority sought would seriously impair the operations of any of the rail protestants, (3) that applicant's past operations under contract for General Motors have been conducted at rates which provided a substantial margin of profit, (4) that there is no basis for the examiner's assumption that if unrestricted authority were granted, the Southern Pacific would be in a position to deprive its rail connections of participation in the traffic by manipulating the rates of its motor contract carrier subsidiary, (5) that the examiner's findings fail to give adequate recognition to the shipper's need for the proposed service to points not on the rail lines of the Southern Pacific, (6) that the restriction against such service is arbitrary and unrealistic in that there is a manifestly greater need for truck transportation to such points than to those served by the Southern Pacific, and (7) that a denial of the application to the extent recommended by the examiner would subject both it and the Southern Pacific to irreparable damage inasmuch as the shipper has indicated that it will institute proprietary operations or support the application of another motor contract carrier, with no rail affiliation, if the recommended findings are affirmed. General Motors challenges the imposition of the aforementioned restriction and the denial of authority to serve points in Idaho, Montana, and Washington, arguing that 80 percent or more of its dealers are located at points off the rail lines of the Southern Pacific.

In reply the opposing rail carriers maintain that all of applicant's present contract-carrier authority is restricted to Southern Pacific points, except that to Carson City and Minden, Nev., which are not on the line of any railroad; that the application represents an attempt by the Southern Pacific, through its motor subsidiary, to invade the territory of other railroads; that existing rail service cannot be deemed inadequate in face of the shipper's continued use of such service to points in California



and Oregon which applicant can presently serve; that a substantial volume of traffic would be diverted from the rail connections of the Southern Pacific to applicant if the restriction is lifted; and that an undesirable situation would be created whereby the Southern Pacific could through its subsidiary give a rate preference to General Motors on outbound shipments of finished automotive vehicles from its three California assembly plants, while at the same time applying the published common-carrier rail rates on shipments handled as a rail carrier for other automobile manufacturers. Western, Convoy, and Kenosha in a joint reply say that the application should be denied in its entirety, generally for the reasons advanced in the exceptions filed by Convoy and other opposing parties; which are summarized below.

Exceptions to the recommended partial grant of authority were separately filed by Convoy, ATA, the conference, and NATA, and jointly by Robertson, Hadley, and B & H. The joint exceptants advance substantially the same arguments as were made by them in the No. MC-78787 (Sub-No. 36) proceeding. The other exceptants collectively contend (1) that existing motor-carrier services have not been shown to be inadequate, (2) that the supporting shipper herein should not be permitted, through the expression of a mere preference, to obtain an additional carrier without regard to the adequacy of existing transportation facilities, (3) that the recommended findings are discriminatory, protecting the interests of the connecting rail lines, but authorizing a new and competing operation into a territory already served by a large number of regulated motor carriers, (4) that the examiner failed to give effect to the statutory prohibition contained in the proviso of section 5 (2) (b) against unrestricted truck operations by railroads or their affiliates, (5) that the proposed dual operations by applicant and its parent railroad presents the opportunity for unfair

competitive practices in violation of section 210, and (6) that the granting of the application will enable the Southern Pacific and applicant to maintain a virtual monopoly in the transportation performed by them for General Motors to and from its three California assembly plants. The conference argues that the application should be either denied in its entirety or restricted in such manner as to make the proposed service auxiliary to or supplemental of the rail service of the Southern Pacific. NATA takes the position (1) that a motor contract carrier subsidiary of a railroad should not be permitted to extend its operations except upon a specific showing that no other transportation service is available to the shipper, and (2) that approval of the application will be followed by unlawful, discriminatory, and destructive rate and pricing practices among competing transporters and automobile manufacturers in the involved territory, contrary to the public interest and national transportation policy.

In reply applicant contends (1) that because of the proximity of its receiving facilities and the integration of its service with the shipper's operations, it is the only carrier that can adequately meet the shipper's requirements for additional truck service, (2) that the opposing motor carriers are unable, either individually or collectively, to furnish the complete service desired, (3) that section 209 contains no specific provision requiring the imposition of unusual restrictions in permits issued to motor-carrier subsidiaries of railroads, (4) that contract carriage by its very nature cannot be auxiliary to, or supplemental of rail service, and (5) that the grants of contract-carrier authority in *Scott Bros., Inc., Extension of Operations—Jersey City*, 34 M. C. C. 163, to a motor subsidiary of The Pennsylvania Railroad Company and to itself in prior application proceedings without any restriction based upon rail ownership are controlling on the issue herein. Applicant further contends that the

proposed dual operations are consistent with the public interest and the national transportation policy; that at no time has any person, shipper, or carrier charged it with any of the practices impliedly interdicted by section 210; that the situation which would result from a grant of authority here is no different from that prevailing in California and Oregon at the time its previous dual operations were approved; and that it is willing to have its outstanding certificates restricted so as to exclude the right to transport assembled automobiles, trucks, and buses. General Motors in its reply asserts that protestants' allegations of error in the examiner's report are without support in the record.

The evidence adduced in the No. MC-78787, subnumbers 35, 36, and 37 proceedings, the examiner's or board's recommendations therein, and the exceptions and the replies thereto in the No. MC-78787 (Sub-No. 36) and No. MC-78787 (Sub-No. 37), proceedings have been considered. We find the examiner's or board's statement of facts in each proceeding, as corrected and supplemented below, to be adequate so far as necessary to a determination of the issues presented and adopt them as our own. Such facts and those set forth in the prior report in the title proceeding will be restated herein only to the extent necessary for a clear understanding of the issues presented.

#### PRESENT AND PROPOSED OPERATIONS OF APPLICANT

Applicant, a wholly owned subsidiary of the Southern Pacific Company, a common carrier by railroad, presently holds various certificates issued by this Commission authorizing the transportation as a common carrier of general commodities, with certain exceptions, between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes paralleling generally the rail lines of the Southern Pacific. This

common-carrier authority, except between certain origins and destinations in Oregon and California, is, with minor exceptions, restricted to service which is auxiliary to or supplemental of the rail service of its proprietary railroad. Applicant also holds permits authorizing operations as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveaway and truckaway service, (1) from Oakland to Hawthorne, Carson City, and Minden, Nev., and points in Nevada which are stations on the rail lines of the Southern Pacific, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its present contract-carrier operations are performed for General Motors from assembly plants at Oakland, South Gate, and Raymer, Calif., in equipment especially designed for that purpose and dedicated to the shipper's exclusive use.

On January 3, 1958, division 1 found that applicant's operations, as of that time, were in conformance with the definition of a contract carrier in section 203. (a) (15), as amended August 22, 1957, and which reads:

The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

Applicant proposes to render a service only for General Motors, the only shipper it presently serves, and to assign its equipment to the exclusive use of that shipper.

Clearly its proposed service will be that of a contract carrier. In accordance with section 209 (b), as amended, any authority granted to applicant in these proceedings will be limited to service for General Motors. Upon a review of all of the evidence of record, we conclude that subject to a discussion hereinafter of the dual-operations issue under section 210 and certain other matters, a need has been established by the supporting shipper in the No. MC-78787 (Sub-No. 34) and No. MC-78787 (Sub-No. 35) proceedings for the transportation of automobiles and trucks, in initial movements, from the site of General Motors' plant No. 1 at Oakland (1) in truckaway service to points in Oregon which are stations on the lines of the Southern Pacific, and (2) in truckaway and driveaway service to Austin, Tonopah, and Yerington. No need has been shown for the proposed transportation of buses.

In the No. MC-78787 (Sub-No. 36) application, applicant proposes to transport new automobiles and trucks from the General Motors Chevrolet plant at Raymer to dealers located at points in Arizona which are stations on the lines of the Southern Pacific. General Motors has used applicant's service exclusively for the motor transportation of its vehicles to various points in California and Nevada. It has shipped automobiles and trucks to the considered Arizona points principally by rail via the Southern Pacific, but desires the proposed service in order to effect faster as well as more direct deliveries to its dealers. It also expects to have some need for driveaway service in the movement of oversized chassis too big to load in a boxcar or on a truck. Its plant at Raymer is adjacent to yard facilities owned by the Southern Pacific and leased to applicant. Inasmuch as extensive storage facilities are not maintained at the Raymer plant, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliv-



eries to dealers. For these reasons, the shipper desires the exclusive service of one contract carrier so that there will be close cooperation and no division of responsibility. Use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant which are geared to the use of applicant's service from its nearby yard. During the first 6 months of 1956, the Raymer plant shipped 4,452 units by rail to points in Arizona on the lines of the Southern Pacific as compared with 792 units, or approximately 15 percent of the total, to other Arizona points.

Exceptants are authorized to conduct the proposed operations, have equipment suitable for the transportation of the shipper's vehicles, and are experienced in transporting the considered commodities. Robertson transports vehicles principally for the Chrysler Corporation; Hadley is under contract with and serves principally the Ford Motor Company; and B & H's contract-carrier service has been rendered principally for the Studebaker-Packard Corporation, which ceased assembling vehicles in this area approximately 30 days prior to the hearing herein.

In our opinion, the evidence reasonably establishes that General Motors requires from its Raymer plant a personalized service in the movement of its automobiles and trucks similar to that which is presently being rendered by applicant from other points. Applicant has served General Motors as a contract carrier for a number of years, and a grant of the authority sought would enable it to furnish a needed enlarged service. Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse affect on existing motor carriers. Since the evidence relates only to a need for service from the General Motors Chevrolet plant at Raymer, any authority granted

will be limited to that plant site as the point of origin and as above indicated will be restricted to service for a named shipper. Driveaway service and truckaway service are required by General Motors, and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.

By its No. MC-78787 (Sub-No. 37) application applicant desires to enlarge the service proposed under its No. MC-78787, subnumbers 34, 35, and ~~36~~ applications from the General Motors Chevrolet plants at Raymer and Oakland to cover all points in the destination States rather than only to those which are stations on the rail lines of the Southern Pacific. It also proposes a new service from the General Motors Buick-Oldsmobile-Pontiac plant at South Gate. In addition to its Raymer and Oakland plants, General Motors maintains a plant for the assembly of Buick, Oldsmobile, and Pontiac automobiles at South Gate. The two Oakland plants are within the corporate limits of that city, and are designated as plants Nos. 1 and 2. Plant No. 1, so far as applicant is concerned, is the shipping point for both plants. The Raymer plant is in Los Angeles, Calif., at a rail point known as Raymer, and the South Gate plant is in South Gate, a point just outside Los Angeles. A small number of the automobiles and trucks manufactured at these three plants move on Government bills of lading in which the Government agency concerned, rather than General Motors, designates the transporter. These shipments have for the most part been handled by existing motor common carriers, including Conroy, Insured Transporters, Inc., and Robinson. The table below shows the total production and the number of vehicular units shipped from the Oakland and Raymer plants to points in the destination States covered by the No. MC-78787 (Sub-No. 37) application in 1955, not including interstate points presently served by applicant.

Destination States	Automobiles and commercial vehicles	
	Oakland	Raymer
Arizona .....		2,453
Idaho .....	5,292	2,454
Nevada .....	122	885
New Mexico .....		165
Oregon .....	5,401	297
Utah .....	41	6,113
Washington .....	24,805	473
Total .....	35,661	12,840
Total plant production.....	125,516	122,649

Production at the South Gate plant in 1955, is not shown of record. Actual movements by rail from the latter plant to points covered by the No. MC-78787 (Sub-No. 37) application for the first 3 months of 1955 were: 1,114 units to Arizona, 246 to Idaho, 36 to Montana, 550 to Nevada, 3,118 to Oregon, 221 to Utah, and 2,857 to Washington. Service with connecting rail carriers is required for deliveries in Washington, Idaho, Montana, eastern Oregon, southern Nevada, Utah, northern Arizona, and New Mexico. If the No. MC-78787 (Sub-No. 37) application is granted, all of the involved traffic moving by rail from Raymer and approximately one-half of that moving by rail from Oakland and South Gate would be diverted to applicant, with a concomitant decrease in the tonnage tendered to the connecting rail lines.

Applicant presently is providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California and to interstate points within the scope of its existing permits. Although it also holds temporary authority to serve points in Oregon, its service has not been used to that State. As at the Raymer plant, applicant's receiving

yards are immediately adjacent to the loading platforms at the Oakland and South Gate assembly plants and its motor operations are fully integrated with the shipper's manufacturing operations at those plants. Its operating ratio and net profit, respectively, on its contract-carrier operations for General Motors amounted to 87 percent and \$90,699 in 1953; 83.7 percent and \$119,375 in 1954; 86.8 percent and \$174,879 in 1955; and 87.9 percent and \$129,245 during the first 11 months of 1956.

The proposed service is supported by General Motors in order to obtain faster transportation on shipments requiring expedited handling; direct deliveries to dealers at off-rail points; more flexible and expeditious handling of consolidated shipments; and to meet the competition of other automobile manufacturers, notably, Ford and Chrysler, which have motor service available. As in the No. MC-78787 (Sub-No. 35) and No. MC-78787 (Sub-No. 36) applications, the shipper's representatives indicated that driveaway service will be required for occasional shipments of oversized vehicles too large to load in a boxcar or on a truck, and also for occasional emergency shipments of automobiles. The shipper, desires the use of a motor contract carrier authorized to meet all of its requirements from each plant and is admittedly unwilling to utilize other existing motor facilities. It alleges that the existing common carriers are unable to offer the personalized and integrated service provided by applicant; that the services of the existing contract carriers are in some instances dedicated to service for its competitors; and that none of these carriers is as conveniently located for receiving its production as applicant. Should the requested authority be denied, General Motors indicates that it will either support the application of an independent motor contract carrier presently serving a branch plant at Arlington, Tex., identified as Texas Auto Transports, Inc., for similar authority, or institute proprietary operations.

Six rail and seven motor protestants presented evidence in opposition to the No. MC-78787 (Sub-No. 37) application. The rail protestants are (1) the Union Pacific Railroad Company which connects with the Southern Pacific at Los Angeles and serves points in Nevada, Utah, Idaho, and Montana, (2) the Northern Pacific Railway Company which connects with the Southern Pacific at Portland, Oreg., and serves points in Washington, Idaho, and Montana, (3) the Great Northern Railway Company which connects with the Southern Pacific at Portland and there receives traffic moving to destinations in Washington, Idaho, and Montana, (4) the Spokane, Portland and Seattle Railway Company, hereinafter called the Spokane, Portland & Seattle, a jointly owned subsidiary of the Great Northern and the Northern Pacific, operating between Portland, Oreg., and Spokane, Wash., (5) the Bamberger Railroad Company, hereinafter called the Bamberger, connecting with the Southern Pacific at Ogden, Utah, and operating between Ogden and Salt Lake City, Utah, and (6) the Portland Traction Company, a short-line carrier serving the Portland, Oreg., area. For the fiscal year ended August 31, 1956, the Union Pacific participated in the movement or delivery of 7,979 carloads of vehicular traffic from California points, the great majority originating at one or the other of the three General Motors California plants. All references to General Motors traffic in the discussion which follows relates to shipments of automobiles, trucks, or buses from these three plants to points in the destination States named in the application. The gross revenues derived from the traffic handled for General Motors amounted to approximately \$1,073,000. In 1955, the Northern Pacific derived revenues of \$366,000 and the Great Northern \$370,599 on General Motors traffic received from the Southern Pacific, while in 1956 the Spokane, Portland & Seattle delivered 659 carloads, the Bamberger 185 carloads, and the Portland Traction Company approximately



2,290 carloads, of General Motors traffic. The connecting-line railroads fear the loss of all or a substantial portion of this traffic if the application is approved.

The opposing motor carriers are authorized and equipped to engage in truckaway or driveaway service and desire to participate in the shipper's traffic to the extent of their operating rights. Convoy, a common carrier, holds initial authority to transport automobiles and trucks, in truckaway service, from Richmond, Calif., to points in Idaho, Oregon, and Washington, serving Oakland, as a point in the Richmond commercial zone. It also holds secondary authority to deliver such vehicles to much of the destination territory here involved through interchange with motor carriers able to originate traffic at the shipper's other California plants. Its terminal closest to Oakland is at San Jose, Calif., 30 miles away. It is willing, however, to establish terminal facilities at or near the Oakland plant if assured sufficient traffic. It performs substantial truckaway operations for Ford from its plants at Maywood and Milpitas, Calif. Its authority from Richmond has been dormant since deactivation of the Ford plant at that point in 1955.

Transport Storage & Distributing Company is authorized to transport (1) new and used automobiles and trucks, in driveaway service, between Seattle, Wash., and points in Washington west of the summit of the Cascade Mountains, and Portland, and (2) automobiles and trucks, new or used, in secondary movements, in truckaway service, between Seattle, on the one hand, and, on the other, Portland and points in Washington, over irregular routes. It maintains warehouse and storage facilities at Seattle and Portland and operates, among other equipment, five trailers especially designed for transporting automobiles. Its operations consist of the storage, servicing, and delivery to dealers of new automobiles and trucks arriving at Seattle and Portland by

rail. It serves approximately 180 General Motors dealers in Washington and is the exclusive agent for all 10 General Motors dealers in Alaska. It alleges that the granting of the application would result in a loss of 65 percent of its total traffic and force a discontinuance of its operations. During the fiscal year ended June 30, 1956, it sustained a net loss of \$6,746.

Hadley holds permits authorizing the transportation, in initial movements, in truckaway service, of automobiles from points in Los Angeles County, Calif., which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and of automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah.

B & H, a contract carrier, is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, Calif., an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements, from Vernon to points in Utah, Idaho, Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone. Robertson holds certificated authority to transport automobiles and trucks, in initial movements, in truckaway service, from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon.

By agreement between the parties the evidence of the two opposing motor carriers next discussed and of NATA was submitted by verified statements. Western Auto Transports, Inc., hereinafter called Western, holds certificated authority to transport new automobiles and trucks, in truckaway service in initial movements, from, among other points, Raymer and South Gate to points in Utah and new automobiles, in truckaway service, in secondary movements, between points in California, Idaho, Nevada, Utah, and Washington. It maintains terminals

at Los Angeles and Richmond and is fully equipped to handle the traffic. If requested by the traffic department of General Motors, it would file an application for authority to serve the General Motors plants at Los Angeles and Oakland to any destination territory beyond its present authority in the transportation of new automobiles and trucks in truckaway and driveaway service, as either a common or a contract carrier. Kenosha Auto Transports Corporation, which apparently lacks any authority to serve the shipper's California plants, is likewise willing to file application for common or contract-carrier authority if requested so to do by General Motors.

Subsequent to the hearing herein, pursuant to the findings in *Insured Transporters, Inc., Ext.—Automobiles, Oakland*, 74 M.C.C. 577, Insured Transporters, Inc., was issued a certificate in No. MC-107227 (Sub-No. 47), dated April 21, 1958, authorizing the transportation of automobiles, in initial movements, in truckaway service, from the sites of the General Motors assembly plants in Oakland to points in Arizona, California, Colorado, Montana, Nevada, New Mexico, Utah, and Wyoming, over irregular routes. This application was supported by various agencies of the United States Government, but not by General Motors.

NATA points out that with respect to the area involved in the instant application, the two other major automobile companies each has west coast manufacturing plants from which automobiles are distributed to points in Western States; that Ford has plants at Maywood and Long Beach in the Los Angeles area and at Milpitas, Calif., in the San Francisco area; that Chrysler has a plant at Maywood; that the various rail carriers serving this territory, including the Southern Pacific, publish group rates on automobiles from all manufacturing origins in the Los Angeles and San Francisco areas to common destinations; and that thus each automobile manufacturer is

charged the same common-carrier rail rates as its competitors from such origins.

A review of the evidence in the No. 78787 (Sub-No. 37) proceeding establishes a need for applicant's proposed service in the movement of new automobiles and trucks from the sites of the three California assembly plants of General Motors at Oakland, Raymer, and South Gate only to those points in the destination States recommended by the examiner which are stations on the rail lines of the Southern Pacific. We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from the Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either the Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand, use by General Motors of applicant's proposed service on a statewide basis would permit the Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified, and the public interest in forestalling it is apparent. The shipper's argument that motor service is needed to non-rail points to meet the competition of other automobile producers can be accorded little probative weight in face of its continued refusal to make use of the available services of the protesting motor carriers. The fact that both

General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby to block the use by other carriers of normal egress routes, has no bearing upon the adequacy or inadequacy of existing motor transportation facilities. On the other hand, insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by the Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. Motor protestants argue that the grant of authority to such points as recommended by the examiner reflects a discriminatory bias favoring the protesting railroads and penalizing the protesting motor carriers. However, it is clear that all of the traffic except that moving on Government bills of lading is now originated by the Southern Pacific, and that regardless of whether the No. MC-78787 (Sub-No. 37) application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of the Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers.

Authority to transport trucks includes authority to transport trailers, and accordingly trailers will be excluded from any grant of authority herein. Although the need for driveaway service is not so great as that for truckaway, both are required by the shipper and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.



## GENERAL DISCUSSION—RESTRICTIONS

As seen, the proof in connection with each of the considered applications, in our opinion, justifies a grant of some authority. Protestants, however, in various pleadings and at oral argument contend that all four of the considered applications should be denied (1) because the proviso in section 5 (2) (b)<sup>4</sup> must be read into section 209 and operates as a bar to the issuance of a contract-carrier permit to an applicant railroad or an applicant railroad subsidiary, and (2) because the holding by applicant of the permits it seeks herein and its presently held certificates would not be consistent with the public interest and the national transportation policy.

After careful study we are impelled to disagree. Our statutory authority to impose terms and conditions in permits issued under section 209 is derived from part (b) of that section, and not from section 5 (2) (b). The rejection by the Commission of a similar contention with respect to section 207 in *Rock Island Motor Transit Co. Com. Car. Application*, 63 M. C. C. 91, 100, was sustained by the United States Supreme Court on December 9, 1957, in *American Trucking Assns., Inc., v. United States*, 355 U. S. 141, subsequent to the argument in these cases. Therein the Supreme Court held that the Congress did not intend the rigid requirement of section 5 (2) (b) to be considered as a limitation on certificates issued under section 207 but added, pages 151-152):

that the underlying policy of § 5 (2) (b) must not be divorced from proceedings for new certificates under § 207. Indeed the Commission must take "cog-

— This provides that the Commission shall not authorize a railroad or its affiliate to acquire a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

nizance" of the National Transportation Policy and apply the Act "as a whole." But for reasons we have stated we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a § 207 proceeding.

Although the Court, in that proceeding, was dealing only with applications for common-carrier certificates, we think that undoubtedly the same principle applies here where contract-carrier permits are sought and in reaching the conclusions above indicated; namely, that some authority should be granted in each proceeding, we have, in fact, given due consideration to the national transportation policy and to the principles which underlie section 5 (2) (b).

While we have power to impose restrictions in any permit granted authorizing motor contract carrier operations, such action is not required by either section 5 (2) (b) or the provisions of the national transportation policy; and it remains to be considered next whether any restrictions should be imposed here. The restrictions usually imposed in common-carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point not a station on the railroad, (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail, (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be

subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service. However, if warranted by special circumstances, certificates have been issued without these restrictions to railroads or their affiliates, whether acquired by purchase as in *Louisville, N. A. & C. R. Co.—Purchase—Meerman*, 45 M. C. C. 6, and *Pacific Motor Trucking Co.—Pur.—Lowinel Trucking Co.*, 60 M. C. C. 373, or as the result of an application filed under section 207, as in *Texas & Pac. Motor Transport Co. Ext.—Point Blue, La.*, 4 M. C. C. 425, *Burlington Truck Lines, Inc., Extension—Iowa*, 48 M. C. C. 516, and *Rock Island Motor Transit Co. Com. Car. Application, supra.*

It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 232 I. C. C. 683; *Willett Co. of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M. C. C. 405; *Louisiana, A. & T. Ry. Co. Common Carrier Application*, 22 M. C. C. 213; *Hagerty Contract Carrier Application*, 26 M. C. C. 413, and *Siebert, Extension—Woodbury and Elmer, N. J.*, 34 M. C. C. 340. In the two last-cited proceedings, the applicants sought permits to transport less-than-carload freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or supplemental of rail service. Since substituted service is common carriage at rail rates and on rail billing, all of the restrictions usually em-

ployed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings. On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted reserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest. Nothing in *Scott Bros., Inc., Extension of Operations—Jersey City, supra*, or in the proceedings in which applicant herein obtained unrestricted contract-carrier authority, is inconsistent with the foregoing.

#### DUAL OPERATIONS

The prior report in the No. MC-78787 (Sub-No. 34) proceeding fully discusses the dual-operation question and needs little enlargement of repetition. The issue was argued extensively previously, and the argument here is not convincing that a different conclusion is warranted. Another wholly owned motor-carrier subsidiary of the Southern Pacific, Southern Pacific Transport Company, holds certificates in No. MC-30310 and various subnumbers thereto authorizing substituted motor-for-rail service auxiliary to or supplemental of the rail operations of

the Southern Pacific and those of an affiliated rail line, the Texas and New Orleans Railroad Company, generally over regular routes between specified points in Texas and Louisiana. The additional dual operations occasioned by the grants of contract-carrier authority herein would not be such an aggravation of the existing dual operations of applicant or between applicant and the commonly controlled Texas subsidiary as to require disapproval. Compare *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M. C. C. 473, 479, and *Complete Auto Transit, Inc.—Extension—Willow Run*, 71 M. C. C. 383, 388.

As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier by rail. In the 54-page consolidated certificate issued to applicant in No. MC-78786, dated July 27, 1956, the 32 different commodity descriptions grouped together under an alphabetical key on sheets 1 through 39 include the descriptions "general commodities, except . . . assembled automobiles" in descriptions F, K, L, Z-1, and Z-6, and "general commodities" with no exceptions referring to assembled automobiles and trucks in descriptions D, H, J, N, S, T, U, Y, Z, and Z-3. Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks, and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted



against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference.

#### FINDINGS

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of the commodities and from and to the points indicated in connection with each application as set forth in the appendix hereto, over irregular routes, limited to the performance of transportation under a continuing contract or contracts with General Motors Corporation, and subject to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions, and limitations as the public interest and national transportation policy may require, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereunder which are not specifically restricted against such transportation; and that the applications in all other respects should be denied.

We further find that the holding by applicant of the permits granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common-carrier operations in the same territory, and the

holding by Southern Pacific Transport Company of the certificates heretofore issued to it, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215, 218, and 221 (c) of the act, with our rules and regulations thereunder, and with the requirements established in *Contracts of Contract Carriers*, 1 M. C. C. 628, appropriate permits will be issued. An order will be entered denying the applications except to the extent granted herein.

FREAS, *Chairman*, concurring in part:

I concur in the action taken by the majority, but would go further.

The 3 plants, respectively established by General Motors in 1914, 1936, and 1947, are served by 1 rail carrier, the Southern Pacific Company. In 1929, the Oakland plant commenced the use of a motor carrier whose operations were acquired by applicant herein in 1935. Applicant has continued to serve the Oakland plant in intrastate commerce since 1935 and also has served the other two plants in intrastate commerce since their establishment. In 1944, this Commission issued a permit to applicant authorizing the transportation of new automobiles, trucks, and buses, in initial movements, from Oakland to Hawthorne, Nev., and points in Nevada which are stations on the rail lines of the Southern Pacific Company. In 1950, similar transportation was authorized from Raymer to Los Angeles Harbor and from Los Angeles to Calexico and San Ysidro, Calif., and, in 1955, from Oakland to Carson City and Minden, Nev. General Motors pays the freight charges on shipments to its dealers and for all such traffic now employs either the rail service of the Southern Pacific Company and its rail-carrier connections or the motor-carrier service of applicant. It appears also that protestant Transport

Storage & Distributing Co. has been providing service from railheads to points in Washington for General Motors dealers.

In maintaining service for General Motors, applicant, at a substantial investment, has acquired an equipment fleet of 317 units, together with receiving and storage yards located adjacent to and operated as integral parts of the plants, and has developed a trained organization of some 200 people devoted exclusively to the transportation needs of the three General Motors plants. Applicant's contract-carrier operations are dedicated solely to service for General Motors. They have been conducted at a profit.

It is clear from the evidence that applicant has long been providing and is in position to render a bona fide contract-carrier service of highly personalized type particularly responsive to the distinct shipping requirements at the plants. Applicant's present operations are substantial and the proposed service is a logical and natural extension thereof, designed to meet the additional needs of the shipper.

The protesting motor carriers have obtained operating rights and acquired service facilities on the basis of the transportation needs of automobile manufacturers other than General Motors, which manufacturers are competitive therewith. With one exception the existing motor carriers have handled only a very negligible amount of the freight involved. Such carriers will, therefore, suffer, no loss of traffic as a result of the expanded service by applicant. A different result, however, will obtain in the instance of the rail-carrier connections of the Southern Pacific Company. The connecting rail carriers and protestant Transport Storage & Distributing Co. have shown that they will suffer loss of traffic and the corresponding revenues therefrom to the detriment of their services.

Considering and weighing, as we are now required to do under the amended provisions of section 209 (b), the effect which granting the application would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and its shipper, as well as the changing character of the shipper's requirements, it is my opinion that the record justifies the issuance of a broader permit in No. MC-78787 (Sub-No. 37). In the latter proceeding I would grant applicant authority to all of the destination points sought, except those which are stations on the lines of the connecting rail carriers of the Southern Pacific Company, but not stations on the lines of the latter, and except those in Washington served by Transport Storage & Distributing Co.

ARPAIA, *Commissioner*, dissenting:

Congress declared it a policy that the various forms of transportation be kept separate and competitive. The Commission has never deviated from applying this principle except where special and unusual circumstances demand it. The Supreme Court has confirmed this position in *American Trucking Assns., Inc., v. United States*, 355 U. S. 141. It is for Congress and not for the Commission to change policy.

In the situation presented here, there are no special or unusual circumstances and the majority, in effect, admits this by granting a permit to the applicant, an affiliate of the Southern Pacific Company, for only a part of the service proposed. If true contract carriage were needed and the circumstances were compelling, then, logically, authority should be granted to all points to which the shipper professes a need for such service.

In essence, the majority has not only failed to follow congressional policy but has misapplied the congressional mandate. It has protected rail protestants against inva-

sion and competition yet has failed to extend protection to the motor-carrier protestants. To accomplish this result, on the same set of facts, the shipper is found to be adequately served in common carriage by existing rail connections. Such an anomalous result suggests inherent doubt as to the soundness of the majority's position. If the special circumstances which entitle the affiliate of a railroad to motor contract carrier authority are present, then there should be no compromise with the facts and the applicable principles.

COMMISSIONER MURPHY, with whom COMMISSIONER McPHERSON joins, dissenting:

I am unable to agree with the view of the majority that dual operations may be approved and this rail subsidiary granted unrestricted motor-carrier authority.

Even if these issues were not present, I would be extremely reluctant to grant the authority sought as there has been no showing of a real need for the proposed service. There is adequate motor common and contract carrier service available and this record reflects nothing more than the shipper's preference for this applicant and its adamant refusal to utilize the services of other carriers.

The majority concedes that, in the absence of special circumstances, a grant of unrestricted motor common or contract carrier authority to a rail subsidiary is not justified; and I submit that in the face of the views expressed by the Supreme Court in *American Trucking Assns., Inc., v. United States*, 355 U. S. 141, no other conclusion could possibly be reached. Obviously these special circumstances must involve something more than, as in these proceedings, the fact that a shipper would prefer and find it convenient to utilize the services of a given carrier and that apparently a grant of authority would not have a material adverse effect on the operations of



existing carriers. To satisfy this condition it must be shown that there is a compelling need for service that can only be met by the particular applicant. The grants of authority by this Commission in the *American Trucking Assns.* case, *supra*, and in *Scott Bros., Inc., Extension—Jersey City*, 34 M. C. C. 163, were based on findings that there was a total absence of satisfactory motor-carrier service. There is no merit to the contention of the majority that its action here is consistent with these decisions.

The majority has limited the grant of authority to service of points on the lines of the Southern Pacific Company. This limitation cannot be a substitute for the necessity of special or unusual conditions in these cases. This limitation merely defines the territorial scope of this grant of unrestricted motor-carrier authority and is actually of little real substance since it will permit the applicant to provide service at a majority of the important traffic centers in the destination territory involved. To these points the service authorized will be wholly unrestricted and if such a grant is proper, simple logic requires a similar grant to off-line points sought by the applicant. The fact of the matter is, however, that a grant of unrestricted authority, regardless of its extent, is not justified on this record.

The objectionable dual operations involved provide a further reason for denying these applications. This question is dealt with summarily in the report even though it is doubtful that there has been a proceeding before us in which exhaustive consideration of this issue was more justified. We have consistently held that the propriety of approving dual operations is to be carefully considered in every proceeding in which this question arises, including those involving subsequent applications by a carrier now conducting dual operations with our approval, and is to be determined upon the basis of the particular

circumstances of each case. I, therefore, do not consider of controlling significance, insofar as our disposition of this issue in the instant case is concerned, the fact that dual operations by this carrier have been approved in several unopposed application proceedings involving relatively limited contract-carrier operations. In my opinion, we would be entirely justified in withholding our approval of further expansion of this carrier's dual operations. The provisions of section 210 were clearly designed to preclude the authorization of both common and contract operations by the same motor carrier under circumstances in which an opportunity for undue preference and unjust discrimination would be created or expanded. In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved, and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of section 210.

I, therefore, would deny the applications in their entirety.

COMMISSIONER MINOR, being necessarily absent, did not participate in the disposition of these proceedings.

COMMISSIONER WALRATH was necessarily absent but had he been present at the time of the adoption of the report by the majority he would have adhered to the position taken by him in the prior report (71 M. C. C. 561), and,

to the extent not inconsistent therewith, would have joined in the dissenting expressions of COMMISSIONERS ARPAIA and MURPHY.

COMMISSIONER GOFF did not participate in the disposition of these proceedings.

## Appendix

### Authority granted

No. MC-78787 (Sub-No. 34). Automobiles and trucks, except trailers, in initial movements, in truck-away service, from the site of General Motors Corporation's plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of Southern Pacific Company.

No. MC-78787 (Sub-No. 35). Automobiles and trucks, except trailers, in initial movements, in truck-away and driveaway service, from the site of the General Motors Corporation's plant No. 1 at Oakland, Calif., to Austin, Tonopah, and Yerington, Nev.

No. MC-78787 (Sub-No. 36). Automobiles and trucks, except trailers, in initial movements, in truck-away and driveaway service, from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Arizona which are stations on the rail lines of the Southern Pacific Company.

No. MC-78787 (Sub-No. 37). (1) Automobiles and trucks, except trailers, in initial movements, in truck-away and driveaway service, (a) from the site of General Motors Corporation's plant No. 1 at Oakland, Calif., to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's plant at South Gate, Calif., to points in Arizona, Nevada, Oregon, and Utah, with service restricted in each instance to points which are stations on the rail lines of the Southern Pacific Company.

## APPENDIX C

## INTERSTATE COMMERCE COMMISSION

No. MC-78787 (SUB-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

*Decided May 8, 1957*

1. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to described points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. Holding by applicant of a permit as authorized herein and those previously issued, and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.
3. Issuance of a permit approved upon compliance by applicant with certain conditions, and application in all other respects denied.

*William Meinhold and Stanfield Johnson for applicant.**John G. Lyons and Phil Jacobson for protestants and interveners in opposition to the application.*

## REPORT OF THE COMMISSION ON ORAL ARGUMENT

## By THE COMMISSION:

No exceptions were filed to the order recommended by the joint board, but it was stayed by order of division 1. The parties have been heard in oral argument with respect to the dual operations issue arising under sec-

tion 210 of the Interstate Commerce Act. Our conclusions differ slightly from those recommended.

By application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle, of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet plants Nos. 1 and 2, in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes. Insured Transporters, Inc., intervened as its interests might appear, and certain other motor common carriers made representations at the oral argument on the dual operations issue.

Applicant is a wholly owned subsidiary of the Southern Pacific Company. It presently holds various certificates issued by this Commission authorizing extensive operations as a motor common carrier between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes, in the transportation of general commodities, with exceptions; and it also holds permits authorizing operations as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveaway and truckaway service (1) from Oakland to Hawthorne, Carson City, and Minden, Nev., and points in Nevada which are stations on the rail lines of the Southern Pacific Company, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its contract-carrier operations are performed for the Chevrolet Division of General Motors Corporation. On June 29, 1955, it was granted temporary authority to transport new automobiles, new trucks, and new buses, in initial movements,



by the truckaway and driveaway methods, from Oakland to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, but as of the date of the hearing herein in January 1956, it had not utilized such authority. Such temporary authority, which is substantially coextensive with the permanent authority here sought, is now conditioned to expire upon final determination of the instant application.

The board recommended that applicant be granted a permit authorizing operation as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in truckaway service, from Oakland to points in Oregon which are stations on the rail lines of the Southern Pacific Company, over irregular routes, restricted to vehicles bearing the trade name "Chevrolet." The board also found that the holding by applicant of such a permit and its holding of a certificate authorizing common-carrier operations in the same territory would be consistent with the public interest and the national transportation policy.

No exception is taken to the board's statement of facts, and we adopt it as our own except to the extent some modification or enlargement thereon appears necessary or desirable for a discussion of the issues presented.

Division 1 stayed the taking effect of the order recommended by the board in order to give consideration to the propriety of the restriction mentioned above; namely, that limiting the service to be performed to the transportation of vehicles bearing the name "Chevrolet," and thereafter the proceeding was assigned for oral argument on the dual operations issue.

General Motors operates two assembly plants in Oakland. One, the so-called plant No. 1, assembles only Chevrolet automobiles. At plant No. 2, however, there are assembled Chevrolet trucks and buses and also GMC

trucks. Chevrolet trucks coming off the assembly line and destined for movement by applicant are driven to applicant's yard, which is adjacent to plant No. 1. GMC trucks coming off the assembly line are driven to the GMC yard adjacent to plant No. 2. The GMC trucks to be delivered by motor vehicle are handled exclusively by intervener Insured Transporters, Inc., and this carrier is apprehensive that if the instant application is granted, without a restriction such as that recommended by the board, it may lose some of its business to applicant. Chevrolet ships its trucks along with shipments of automobiles, and it is necessary that any carrier utilized to transport automobiles be in a position to handle both types of vehicles. Insured is not authorized to transport automobiles and hence its service would be of little use for the combined movement of Chevrolet trucks and automobiles.

In our opinion, commodity descriptions couched in terms of trade names are objectionable under any circumstances. The desired result may be otherwise obtained, however, (1) by restricting the transportation of trucks to those in mixed shipments with automobiles, or (2) by limiting the service to shipments from the site of plant No. 1. It is possible that occasions might arise when Chevrolet would desire to ship a straight load of trucks, and hence the restriction to the site of plant No. 1 appears to be preferable.

The record is silent concerning the proposed movement of buses, and, in fact, the shipper's representative indicated an interest in the proposed service only insofar as automobiles and trucks are concerned. Additionally, the service is to be performed only by the truckaway method, and there is no showing that the equipment to be utilized is capable of handling assembled buses. In the circumstances, and except for the provisions of section 210 of the act hereafter discussed, the record establishes a

need on the part of the supporting shipper for the transportation of new automobiles and new trucks, in initial movements, from the site of General Motors' plant No. 1, in Oakland, to points in Oregon on the lines of the Southern Pacific Company.

There remains the question of the propriety of granting applicant a permit authorizing operations of the scope indicated above while, at the same time, it also holds a certificate authorizing common-carrier operations in the same territory. Further, there is also a question as to whether we should grant such a permit in view of the extensive common-carrier rail service now provided in the territory by applicant's parent corporation, the Southern Pacific Company. True, the provisions of section 210 of the act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle, but even without the statutory requirements we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed.

Insofar as concerns dual operations by applicant as a common carrier and as a contract carrier by motor vehicle, the contract-carrier operations here considered are not competitive with the common-carrier operations now conducted or authorized. Most of the common-carrier authority held by applicant is restricted against the transportation of automobiles and trucks, either specifically, or in the form of a restriction against the transportation of commodities requiring special equipment. The latter

restriction would not preclude the movement of a single car or truck on a unit of conventional equipment, but that type of movement is not practicable for an operation of the nature here considered, and the restriction operates as a bar to the use of the specialized equipment here contemplated to be used. Actually, applicant has never transported an automobile or a truck under its common-carrier authority, and it expresses a willingness to have any appropriate limitation imposed upon such authority to prevent it from so doing. Although the common-carrier and contract-carrier operations are not competitive, the granting of authority which would permit applicant to serve the same shipper, either at the same plant or at any other point, both as a contract carrier of automobiles and trucks and a common carrier of general freight, nevertheless requires careful scrutiny and special justification. The relationship between applicant and the railroad clearly opens the door for violation of the principles underlying section 210, even though not specifically covered by the statute. The granting of the instant application would permit the Southern Pacific Company to serve the same shipper, General Motors, both as a contract carrier by motor vehicle and as a common carrier both by rail and motor of general freight.

In defense of its position that such dual operations described above are not inconsistent with the public interest and the national transportation policy, applicant points out that the present situation has prevailed for many years, it having commenced its contract-carrier service for Chevrolet in 1935, in intrastate commerce; that at no time has any person, carrier or otherwise, charged it with any of the practices which section 210 is designed to prohibit; that the situation which would result from a grant of authority to extend its contract-carrier operations into Oregon is in no way different from that prevailing in California and Nevada at the time its previous dual operations were approved; and

that the situation, for all practical purposes is no different from that which has prevailed in the movement of California intrastate traffic for over 20 years, with the approval of the regulatory commission of that State. It further urges that it has expended large sums of money for equipment and other facilities in reliance upon the approval which we have heretofore granted with respect to dual operations and with respect to the grant of temporary authority which we made for contract-carrier operation of the scope here involved as far back as June 1955. It points out that the provisions of section 210 are not absolutely prohibitive of dual operations and that the history of the statute indicates an intent that dual operations shall be approved in meritorious cases.

Applicant's plea that it has relied upon our past approval of specific dual operations, we think, is without merit. Each successive grant of common- or contract-carrier authority which would result in dual operations must, under the statute, be accompanied by a finding that such resultant dual operations will be consistent with the public interest and the national transportation policy. Each such finding must be based upon the circumstances existing at the time the particular grant is made, and each case must be decided on its own merits. Certainly, the express provisions of the act place applicant on notice that it should not rely upon a grant of temporary authority to foreshadow a subsequent grant of corresponding permanent authority.

In other respects, however, we agree with the applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract



carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations.

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of automobiles and trucks, in initial movements, in truck-away service, from the site of General Motors Corporation's plant No. 1, at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a permit authorizing such service should be granted; and that in all other respects the application should be denied.

We further find that the holding by applicant of the permit granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common-carrier operations in the same territory, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215 and 218 of the act, with our rules and regulations thereunder, and with the requirements established in *Contracts of Contract Carriers*, 1 M. C. C. 628, an appropriate permit will be issued. An order will be entered denying the application except to the extent granted.

WALRATH, *Commissioner*, dissenting:

I am not in agreement with the conclusions of the report with respect to dual operations. Approval of the holding of a certificate and a permit by applicant may be made only upon a showing of good cause under the language of section 210 of the act. In my opinion, the record does not present any basis for finding that the dual operations, which would result from a grant of contract-carrier authority, will be consistent with the public interest and with the national transportation policy. Rather, it forces me to a contrary conclusion. The prohibition against dualism in carrier operations was clearly designed to prevent the possibility of undue preference and unjust discrimination. While the statute speaks only of motor-carrier operations, here we are faced with approving the issuance of a contract-carrier permit to a certificated common carrier which is completely controlled by a rail carrier. Notwithstanding past performances in a dual capacity, without complaint or charge of discriminatory practices, the authorization of additional contract carriage by applicant will compound a situation already fraught with the peril which the prohibition was intended to prevent. Surely, the ability to serve a shipper in connection with its unquestionably extensive volume of inbound general freight traffic as a rail carrier and as a motor common carrier, as well as to provide service on the outbound traffic of automobiles and trucks both as a rail carrier and a motor contract carrier, places such a carrier in a peculiarly advantageous position to favor the shipper, even where the motor contract carrier service is limited to points which are stations on the principal's rail lines. Thus, the possibility of preferential and discriminatory practices far outweighs the recognition in this case of the preference of a single shipper and the other reasons mentioned in the report as justifying a finding that good cause exists for approving applicant's operating as both a common and contract carrier within the same territory.

McPHERSON, *Commissioner*, dissenting:

I do not agree with the statement in this report that applicant is unable to transport automobiles under its general-commodity operating authority. See *L. C. Jones Trucking Co. Extension—The Dakotas*, 62 M. C. C. 539. Applicant, under the grant herein, will therefore be able to transport automobiles as both a common carrier and a contract carrier. The Southern Pacific Company, of which applicant is a wholly owned subsidiary, may transport automobiles in rail service. In view of these facts, I believe that all will agree that a very serious question is presented with respect to the extent to which operations contemplated by section 210 of the act will be authorized.

I agree that in general each situation in which dual operations are involved must be considered on its own merits, and I am considerably impressed by the fact that no instances of discrimination or other improper practices with respect to the parties or operations here involved have been brought to our attention, but I do not believe that approval of the dual operations which would result here can be based on the absence of criticism with respect to past operations. Although applicant may be able to serve only one automobile and truck manufacturer as a contract carrier, it is able to serve several others as a common carrier, in the same general territory and on the same as well as different commodities. The opportunities for indulging in unfair or discriminatory practices are very great. The mere possibility is usually sufficient to be a bar to approval of dual operations. See *C. A. Conklin Truck Line, Inc.—Dual Operation*, 44 M. C. C. 463. In the circumstances, I am unable to find the good cause which the act requires before we may approve dual operation, and, therefore, I feel compelled to deny the application.

COMMISSIONERS FREAS, WINCHELL, and MURPHY did not participate in the disposition of this proceeding.

## APPENDIX D

## NATIONAL TRANSPORTATION POLICY

[September 18, 1940.] [49 U.S.C., preceding § 1, 301, 901, and 1001.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote, safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

## COMBINATIONS AND CONSOLIDATIONS OF CARRIERS

Sec. 5. [As amended August 24, 1912, February 28, 1920, June 10, 1921, June 16, 1933, June 19, 1934, August 9, 1935, September 18, 1940, and August 2, 1949.] [49 U.S.C. § 5.]

. . . . .

(2)(a) It shall be lawful, with the approval and authorization of the Commission, is provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) ~~Whenever a~~ transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in Section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reason-



able, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

### ISSUANCE OF CERTIFICATE

Sec. 207. [August 9, 1935.] [49 U.S.C. § 307.] (a) Subject to Section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided*, however, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

## PERMITS FOR CONTRACT CARRIERS BY MOTOR VEHICLE

Sec. 209. [August 9, 1935, June 29, 1938, September 18, 1940, September 1, 1950, and August 22, 1957.]

. . . . .

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to Section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this part and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms.

conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6): *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless upon investigation or its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203(a)(15), as in force on and after the effective date of this proviso.

### DUAL OPERATIONS

Sec. 210. [August 9, 1935, amended September 18, 1940] [49 U.S.C. § 310.] - Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier authorizing operation

for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, ~~controlled person~~, or person under common control, holds a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory; and

(2) No person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory.

FILE COPY

In the  
Supreme Court of the United States

OCTOBER TERM, 1958

No. [REDACTED]

74

Office-Supreme Court, U.S.

FILED

JUN 19 1959

JAMES R. BROWNING, Clerk

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
et al.,

*Appellants,*

UNITED STATES OF AMERICA and INTERSTATE  
COMMERCE COMMISSION

and

PACIFIC MOTOR TRUCKING CO., and GEN-  
ERAL MOTORS CORPORATION,

*Appellees.*

On Appeal from the United States District Court  
for the District of Columbia

**Motion to Affirm on Behalf of Appellees Pacific  
Motor Trucking Company and General  
Motors Corporation**

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**In the  
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**OCTOBER TERM, 1958**

**No. ....**

**AMERICAN TRUCKING ASSOCIATIONS, INC.,  
et al.,**

*Appellants,*

*v.*

**UNITED STATES OF AMERICA and INTERSTATE  
COMMERCE COMMISSION**

**and**

**PACIFIC MOTOR TRUCKING CO., and GEN-  
ERAL MOTORS CORPORATION,**

*Appellees.*

**On Appeal from the United States District Court  
for the District of Columbia**

**Motion to Affirm on Behalf of Appellees Pacific  
Motor Trucking Company and General  
Motors Corporation**

Appellees, Pacific Motor Trucking Company and General Motors Corporation, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the decree of the District Court be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

### STATEMENT

This is a direct appeal, pursuant to 28 U.S.C., § 1253, from the final decree,<sup>1</sup> dated January 30, 1959, of a specially constituted three-judge District Court, which dismissed on the merits<sup>2</sup> appellants' complaint to set aside an order of the Interstate Commerce Commission.

Appellants are certain motor carrier trade associations and motor carriers. The Commission's report and order under attack, dated September 9, 1958 (J.S. Appendix B), granted a motor contract carrier permit under section 209(b) of the Interstate Commerce Act (49 U.S.C. § 309(b)) to Pacific Motor Trucking Company (referred to herein as PMT) to transport automobiles and trucks to various points hereinafter described from the plants of General Motors Corporation (hereinafter referred to as GM), situated in Oakland, Raymer<sup>3</sup> and South Gate, California. PMT is a wholly-owned motor common and contract carrier subsidiary of Southern Pacific Company (herein referred to as SP), which is a common carrier by railroad

1. The court's decree and opinion are set forth as Appendix A to the Jurisdictional Statement (referred to herein as J.S.). A temporary restraining order was denied by the court after hearing and on November 24, 1958, permits authorized by the Commission's order sought to be set aside herein were issued (J.S. 26).

2. A majority of the court also dismissed the complaint on the further ground that the plaintiffs lacked standing to sue (J.S. 39-41). In this connection they found (J.S. 40):

"\* \* \* Not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of the extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to bring this action."

While appellants attack this holding (J.S. 4, question 5; 17-19), in view of the demonstrable insubstantiality of their case on the merits, we submit that there is no occasion for this Court to consider the propriety of such holding.

3. Raymer and South Gate are in the Los Angeles area.

operating in California, Nevada, Oregon, Utah, Arizona, New Mexico and Texas. Both PMT and GM were permitted to intervene as defendants in these proceedings. The Jurisdictional Statement was received by them on May 25, 1959.

In its opinion the court correctly summarized PMT's present operations and the proceedings before the Commission which led to this litigation as follows (J.S. 24-26) :

"PMT since December 10, 1935, has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and drive-away service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub. 23, issued June 20, 1944) ; (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub. 27, issued April 21, 1950) ; (3) from Raymer, California, to points in the Los Angeles Harbor Commercial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950) ; and (4) from Oakland, California, to Carson City and Minden, Nevada, both being non-rail points (MC 78787, Sub 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications involved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California.

"The order complained of grew out of extensive proceedings before the Commission following the filing of the four applications by PMT, seeking to extend its service as a contract carrier for GM in the Pacific Coast



area for the transportation of a single commodity, new automobiles and trucks. In general, by the Sub 34 application, PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, California, to all Oregon points which are stations on SP; by the Sub 35 application, the right to serve three additional non rail points in Nevada from Oakland, California; by the Sub 36 application, to serve all Arizona points which are stations on SP; and by the Sub 37 application, authority to round out its service areas from the Oakland and Raymer plants to include all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico, whether or not they are stations on SP; and to begin new service from the Buick-Oldsmobile-Pontiac plant at South Gate, California, to a seven-state area, namely, Washington, Oregon, Idaho, Nevada, Utah, Arizona, and Montana. The four sub-proceedings were finally consolidated in Sub 37, from which the order complained of emanated. All of the plaintiffs in this action, who had been protestants in one or more of the other sub-numbers, participated in the consolidated proceeding before the Commission.

"By the order here under attack, the Commission granted the authority sought in the Sub 35 proceeding, service from the Oakland plant to three additional non-rail points in Nevada, which had been opposed by only one protestant, not a party to this action; but as to the Sub 34, 36, and 37 applications, the Commission denied entirely the authority requested to serve destinations in states not served by SP (Washington, Idaho, and Montana) and limited the authority granted to destinations in the other states (Arizona, Nevada, Oregon, Utah, and New Mexico) to points located on the rail lines of SP. Thus, the Commission's order granted only a limited portion of the authority sought in the four applications, and issuance of the new permits thereunder was conditioned on curtailment of existing common carrier authority to transport automobiles and trucks."

## ARGUMENT

- I. The Commission Expressly Followed the Construction of the National Transportation Policy Only Recently Approved<sup>4</sup> by This Court as to Entry by Rail Subsidiaries into Motor Common Carrier Operations in Restricting PMT to Service to Points on the Rail Lines of SP; Its Refusal to Impose Other Usual Restrictions Imposed in Similar Common Carrier Situations Was Based Not on Any Departure from That Policy or Because of "Special Circumstances", but Solely on the Fact That Such Restrictions Would Have Converted These Operations into Common Carrier Operations and Thus Have Been Beyond the Commission's Power to Impose Under Section 209(b) of the Interstate Commerce Act as It Existed Both Before and After the 1957 Amendment.

In *American Trucking Associations, Inc. v. United States*, 355 U.S. 141 (1957), this Court held that while the underlying policy of section 5(2)(b) of the Interstate Commerce Act<sup>4</sup> and the national transportation policy<sup>5</sup> must be considered in applications of rail subsidiaries for new common carrier motor vehicle certificates, nevertheless the Commission might, where "special circumstances" existed, grant a certificate without restrictions designed to keep the motor service auxiliary and supplemental to rail service.

Briefly stated, the gist of appellants' argument in support of questions 1, 2 and 4 (J.S. 3, 6-12, 14-17) is that the Commission's decision is in conflict with the national transportation policy and the above decision of this Court in that it here granted an unrestricted permit to PMT when "special circumstances" were not found to exist. The basic flaw

4. 49 U.S.C. § 5(2)(b). This section is set out in full as Appendix D, pp. 91-93, J.S. The pertinent portion provides that the Commission shall not authorize a railroad or its affiliate to acquire a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

5. Set forth in Appendix D, J.S. 91.

in this argument is that appellants' description of the rights granted PMT as "unrestricted" (J.S. 6) is patently incorrect. Instead, it is obvious that the Commission applied the national transportation policy, as construed in the *American Trucking Associations* case, to the contract carrier situation before it, and, because "special circumstances" were not found to exist, it restricted<sup>6</sup> PMT's permit to service to points on the rail lines of SP. Such restriction was expressly described by the Commission (J.S. 69) as one of "the restrictions usually imposed in common carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service." In addition, the Commission imposed a further restriction reserving the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest (J.S. 71).

Our above characterization of the Commission's action is quite apparent from the following excerpt from its decision (J.S. 68-71):

"After careful study we are impelled to disagree. Our statutory authority to impose terms and conditions in permits issued under section 209 is derived from part (b) of that section, and not from section 5 (2) (b). The rejection by the Commission of a similar contention with respect to section 207 in *Rock Island Motor Transit Co. Com. Car. Application*, 63 M.C.C. 91, 100, was sustained by the United States Supreme

6. With the minor exception that service was authorized from the Oakland plant to Austin, Tonopah and Yerington, Nevada, which are not on the lines of SP. However, as to such points the record clearly shows that there were "special circumstances" (i.e. special need) within the meaning of the *American Trucking Associations* case, *supra*, because such points were not on the lines of any railroad (Sub. 35 proceedings, R. 74), and because none of plaintiffs protested such application or even had authority to operate between such points (J.S. 63-65).

Court on December 9, 1957, in *American Trucking Assns., Inc., v. United States*, 355 U.S. 141, subsequent to the argument in these cases. Therein the Supreme Court held that the Congress did not intend the rigid requirement of section 5 (2) (b) to be considered as a limitation on certificates issued under section 207 but added, pages 151-152):

‘that the underlying policy of § 5 (2) (b) must not be divorced from proceedings for new certificates under § 207. Indeed the Commission must take “cognizance” of the National Transportation Policy and apply the Act “as a whole”. But for reasons we have stated we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a § 207 proceeding.’

*“Although the Court, in that proceeding, was dealing only with applications for common-carrier certificates, we think that undoubtedly the same principle applies here where contract-carrier permits are sought and in reaching the conclusions above indicated; namely, that some authority should be granted in each proceeding; we have, in fact, given due consideration to the national transportation policy and to the principles which underlie section 5 (2) (b). (Emphasis added.)*

“While we have power to impose restrictions in any permit granted authorizing motor contract carrier operations, such action is not required by either section 5 (2) (b) or the provisions of the national transportation policy; and it remains to be considered next whether any restrictions should be imposed here. *The restrictions usually imposed in common-carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-*

controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) *applicant shall not serve any point not a station on the railroad*, (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail, (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service. *However, if warranted by special circumstances, certificates have been issued without these restrictions to railroads or their affiliates, whether acquired by purchase \* \* \* or as the result of an application filed under section 207 \* \* \*. (Emphasis added.)*

*"\* \* \* On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific Railroad. Also a restriction is warranted reserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest." (Emphasis added.)*



The District Court clearly agreed that the Commission had followed the policy of the *American Trucking Associations* case and that it had not granted unrestricted authority to PMT. Thus, it said (J.S. 36, 37-38):

"The Commission concedes that the rationale which requires a reading of the Act as a whole and consideration of the policy underlying § 5(2)(b) as a guiding light in the issuance of § 207 common carrier certificates is equally applicable to the granting of § 209(b) permits for contract carrier operations \* \* \*.

"\* \* \* The extended operations authorized, however—far from being 'unrestricted' operations by PMT in the contract carrier field, as the plaintiffs have consistently referred to them—were restricted in many respects. The authority granted was limited to points already served by SP (so as not to affect adversely other railroads carrying GM traffic beyond SP to other rail points), and limited to points on the rail line of SP (so as not to cut in on territory which potentially might be served by independent motor carrier protestants), subject to the condition that 'the permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks' in its outstanding common carrier certificates (in the interest of avoiding the possibility of dual motor carrier operations), and the further condition 'that there may from time to time in the future be attached to the permits granted such reasonable terms, conditions and limitations as the public interest and national transportation policy may require'."

The Commission's refusal to impose other restrictions usually imposed where motor common carrier operations by a rail subsidiary are involved in order to limit the service to that which is supplemental or auxiliary to train service was clearly based not on any departure from the policy ex-

pressed by this Court in the *American Trucking Associations* case nor on the existence of "special circumstances". Instead, it was plainly based on the simple fact that such restrictions would have converted these operations of PMT into common carrier operations and would therefore have been beyond the power of the Commission to impose under section 209(b) of the Interstate Commerce Act. This is apparent from the following excerpt from the Commission's decision (J.S. 69-71):

" \* \* \* The restrictions usually imposed in common-carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point not a station on the railroad, (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail, (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service \* \* \* .

"It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 232 I.C.C. 683; *Willett Co. of Indiana, Inc., Extension*—

*Ill., Ind., and Ky.*, 21 M. C. C. 405; *Louisiana, A. & T. Ry. Co. Common Carrier Application*, 22 M. C. C. 213; *Hagerly Contract Carrier Application*, 26 M. C. C. 413, and *Siebert Extension—Woodbury and Elmer, N. J.*, 34 M. C. C. 340. In the two last-cited proceedings, the applicants sought permits to transport less-than-car-load freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or supplemental of rail service. *Since substituted service is common carriage at rail rates and on rail billing, all of the restrictions usually employed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings.*" (Emphasis added.)

The reason why the imposition of these usual conditions attached in motor common carrier cases must necessarily have converted these operations of PMT into common carrier operations is quite apparent from the Commission's decision in *Willett Co. of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M.C.C. 405, 409 (1940), one of the cases cited in this connection in the instant report. There the Commission observed that coordinated rail-motor service, that which results when, as in that case, the usual auxiliary and supplemental restrictions are imposed, "could only be accomplished through the medium of through routes and joint rates. \* \* \*" Under section 216(c) (49 U.S.C.

§ 316(c))<sup>7</sup> of the Interstate Commerce Act only through routes and joint rates between railroads and common carriers by motor vehicle are authorized. There is no provision authorizing such between railroads and contract carriers. Appellants' argument thus leads to the absurd result that they would have the Commission attach restrictions commanding SP and PMT to do that which they cannot lawfully do under section 216(c) unless PMT be considered a common carrier as to these operations.

Under the clear language of section 209(b) of the Interstate Commerce Act the Commission had no power to impose restrictions which would have converted these operations from contract carrier to common carrier operations. Thus, both before and after that section was amended by Public Law 85-163, enacted on August 22, 1957 (71 Stat. 411),<sup>8</sup> it provided that the Commission shall attach to the permit "reasonable terms, conditions and limitations consistent with the character of the holder as a contract carrier." The District Court properly held<sup>9</sup> that the Commission was obligated to apply the new specific criteria, set forth in the 1957 amendment, in determining public interest and applying the national transportation policy (J.S. 32) and concluded (J.S. 33):

"The order here challenged shows on its face that the Commission did consider those criteria, making findings with respect to each of them."

7. This section provides:

"(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; \* \* \*"

8. Section 209(b), as amended, is set forth in Appendix D to the Jurisdictional Statement, pp. 94-95.

9. *Ziffrin, Inc. v. United States*, 318 U.S. 73, 78 (1943).

But nowhere in either the Commission's or the District Court's decisions is there any suggestion that the 1957 amendment was intended to alter the Congressional policies regarding rail entry into the motor carrier field. Consequently, question numbered 4,<sup>10</sup> which appellants seek to raise, regarding the propriety of such a construction is simply not before this Court. In any event, however, any requirement which may be read into the broad and general terms of the national transportation policy, that the Commission must attach auxiliary and supplemental restrictions in a particular case must yield to the more specific requirement of section 209(b) that it cannot attach restrictions which are inconsistent with the status of the applicant as a contract carrier.

**II. The Commission Thoroughly Considered the Propriety of Permitting Dual Operations by PMT as a Common and Contract Carrier Under the Policy of Section 210 of the Interstate Commerce Act. Its Ultimate Finding That Such Dual Operations Were Feasible Is Rationally Supported by Adequate Subordinate Findings for Which There Is Substantial Support in the Evidence and Is Therefore Conclusive Upon the Court.**

The argument in this section is in refutation of appellants' argument, in connection with question numbered 3, that the Commission failed to carry out the policy evidenced by section 210 of the Interstate Commerce Act.

Section 210 of the Interstate Commerce Act (49 U.S.C. § 310), so far as pertinent, provides:

"Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a

10. See J.S. 4, 14-17. This question, sought to be raised by appellants, is:

"Whether the 1957 amendments to the provisions of the Interstate Commerce Act, Part II, dealing with motor contract carriers, were intended to alter the Congressional policy against rail entry into the motor carrier field?"



permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

“(2) no person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory.”

Contrary to appellants' contentions, the Commission thoroughly considered questions arising under this statutory provision (J.S. 71-73) and made the following ultimate finding (J.S. 73-74):

“We further find that the holding by applicant of the permits granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common carrier operations in the same territory, and the holding by Southern Pacific Transport Company<sup>11</sup> of the certificates heretofore issued to it, will be consistent with the public interest and the national transportation policy.”

In support of this ultimate finding the Commission in its report discussed the matter at length as follows: (J.S. 71-73), wherein are set forth its subordinate findings:

“The prior report in the Sub 34<sup>12</sup> proceeding fully discusses the dual operation question and needs little

11. Another motor-carrier subsidiary of SP. Technically, the Commission was not required to consider the operations of this company, since it does not operate “over the same route or within the same territory” as PMT, within the meaning of section 210. The fact that it did so is another indication of the thorough consideration which it gave to the dual operations issue.

12. Set forth as Appendix C, J.S. 81.

enlargement or repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted. Another wholly-owned motor carrier subsidiary of Southern Pacific, Southern Pacific Transport Company, holds certificates in No. MC-30319 and various sub-numbers thereto authorizing substituted motor-for-rail service auxiliary to or supplemental of the rail operations of Southern Pacific and those of an affiliated rail line, Texas & New Orleans Railroad Company, generally over regular routes between specified points in Texas and Louisiana. The additional dual operations occasioned by the grants of contract-carrier authority herein would not be such an aggravation of the existing dual operations of applicant or between applicant and the commonly controlled Texas subsidiary as to require disapproval. Compare *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M.C.C. 473, 479, and *Complete Auto Transit, Inc.,—Extension, Willow Run*, 71 M.C.C. 383, 388.

"As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier by rail. In the 54-page consolidated certificate issued to applicant in No. MC-78786, dated July 27, 1956, the 32 different commodity descriptions grouped together under an alphabetical key on sheets 37 through 39 include the descriptions 'general commodities, except \* \* \* assembled automobiles' in descriptions F, K, L, Z-1, and Z-6, and 'general commodities' with no exceptions referring to assembled automobiles and trucks in descriptions D, H, J, N, S, T, U, Y, Z, and Z-3. Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks, and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail

service, to forestall any possibility of discrimination because of the dual operations involved, our grants here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference."

As indicated above, the Commission in its present decision also adopted and incorporated by reference its findings in this connection which were made in its prior report in the Sub. 34 proceedings. In that prior report of May 8, 1957, the Commission made the following subordinate findings in this connection (J.S. 87-88):

"In other respects however, we agree with applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. *Applicant's past satisfactory performance in a dual capacity has been without criticism.* These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations." (Emphasis added.)

The determination which the Commission is required to make under section 210, which on its face is not an absolute prohibition, is merely another of the numerous determinations which Congress has entrusted to the Commission's expert judgment and discretion. As in the case of such other determinations, it is settled that the Commission's determinations under section 210 are binding upon the courts if rationally supported by adequate findings for which there is substantial support in the evidence. *Fine & Jackson Trucking Corp. v. United States*, 65 F. Supp. 443 (D. N.J. 1946); *Ziffrin, Inc. v. United States*, *supra*. Certainly, as indicated below, such is plainly the situation here.

As recognized by the Commission herein and previously (*Scott Bros., Inc., Contract Carrier Application*, 32 M.C.C. 253, 256 (1942)), the vice at which section 210 is aimed is the possibility that a carrier having the right to operate both as a common and contract carrier by motor vehicle may discriminate between its shippers by charging some the regulated published common-carrier rates and charging others reduced contract-carrier rates. The Commission's findings and action here rationally support the conclusion that there would be no such possibility in the present situation, and thus support its ultimate findings that the holding of dual operating rights by PMT was consistent with the public interest and the national transportation policy. Thus, the Commission found in the prior report in the Sub. 34 proceedings, which findings are incorporated herein by reference, that PMT's past performance in a dual capacity had been satisfactory and without criticism, for which finding there is ample evidentiary support (Sub. 34 proceeding, R. 47-48). Furthermore, to forestall any possibility of discrimination, as above indicated, the Commission required PMT to waive specifically any rights it might have to transport as a common carrier, automobiles and trucks, the only commodities which

it was herein authorized to transport as a contract carrier, and PMT has since complied with this requirement. Finally, the Commission even guarded against the possibility of any future discrimination by providing that it retained the right to "reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference."

One further point should be made. The Commission, under the plain language of section 210, was not authorized to, and could not, deny PMT a contract-carrier permit merely because its rail parent was a common carrier by railroad of the same commodities. By its terms section 210 applies only to dual operations by the same or affiliated persons as common and contract carriers by motor vehicle. To hold that a rail subsidiary could not be granted a contract carrier permit to transport a particular commodity merely because its rail parent transports the same commodity as a common carrier by rail, would, in practical effect, bar such a subsidiary from ever engaging in motor contract carriage, which Congress has never seen fit to declare to be the law. This is for the reason that rail common carriers, unlike motor common carriers, have a common law and a statutory obligation to transport all commodities presented and can never lawfully waive their rights to transport even a single commodity. In any event, however, it is apparent that the Commission in its report in discussing section 210 did consider the possibility that rail operations could be performed for the same shipper, GM, by PMT's parent, SP, which PMT could serve in its common and contract carrier by motor vehicle operations, when it said (J.S. 72):

"As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle



*and, through its parent, as a common carrier by rail."*  
(Emphasis added.)

Also, the Commission in connection with its discussion of section 209(b) thoroughly considered PMT's right to a permit in the light of its relationship with SP and adequately restricted the permit authorized merely because of this relationship.

Finally, it should be noted that appellants made this same argument before the District Court (J.S. 28) and that court thoroughly rejected the idea that the Commission had not given proper weight to the policies embodied in section 210 or other pertinent statutory provisions. Thus, it said (J.S. 36-37):

"That the Commission did apply the Act as a whole, giving effect to the policies underlying §§ 5(2)(b), 207, and 210, as well as carefully following the guide laid down by the Congress in § 209(b) for determining public interest and compliance with the national transportation policy, is borne out not only by the findings of fact recited in the Commission's order, but by its conclusions as to the scope of extended operations which would be in the public interest, and by the curtailed authority which the Commission granted. It will be observed that the requested authority was denied where it would encroach upon existing service by other carriers, and granted where the evidence of record showed that the proposed extension would have little or no effect upon present and future operations of the protestants."

## CONCLUSION

To set aside the decisions of the District Court and the Commission would have the following results: (1) to terminate a service which has been in effect since November 24, 1958, and which has been found by both the Commission and the District Court to be consistent with the public interest and the national transportation policy; (2) to terminate a relatively minor extension of contract carrier service which is restricted to rail points, whereas that which PMT has performed in intrastate commerce since December 10, 1935, with approval of the California Commission, and much of that which it has performed in interstate commerce under various decisions of the Interstate Commerce Commission ever since 1944 are completely unrestricted (J.S. 24-25); and (3) to disapprove contract carrier service by a railroad subsidiary, which is more restricted than that approved by the Commission for a subsidiary of Pennsylvania Railroad as long ago as 1942. *Scott Bros., Incorporated, Extension of Operations—Jersey City*, 34 M.C.C. 163 (1942).<sup>13</sup> All this would be done at the request of appellants who, the District Court has found (J.S. 40), made "no showing of actual or anticipated direct injury" from the Commission's order. In view of the clear balance of equities against appellants, in view of the fact that their appeal seeks to raise issues which, for the most part, are purely fictitious because based on an obvious misconception of what the Commission did, and in view of the complete lack of merit of appellants' arguments, it is evident that the appeal presents no sub-

13. The Commission in its present decision said (J.S. 71):

"Nothing in *Scott Bros., Inc., Extension of Operations—Jersey City*, *supra*, or in the proceedings in which applicant herein obtained unrestricted contract-carrier authority, is inconsistent with the foregoing."

stantial question. It is, therefore, respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

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**Certificate of Service**

I, ROBERT L. PIERCE, one of the attorneys for appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 18th day of June, 1959, I served copies of the foregoing document on the several parties thereto, as follows:

1. On appellants, American Trucking Associations, Inc., its Contract Carrier Conference, National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to Walter N. Bieman, Esq., 2150 Guardian Bldg., Detroit 26, Michigan; to Larry A. Eskilsen, Esq., 1111 E Street, N.W., Washington 4, D.C., to Charles W. Singer, Esq., 1825 Jefferson Place, N.W., Washington, D.C., and to Peter T. Beardsley, 1424 Sixteenth Street, N. W., Washington, D.C.

2. On the United States, by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D.C., and Willard R. Memler, Esq., Department of Justice, Washington 25, D.C.

3. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Esq., Assistant General Counsel, at the offices of the Commission, Washington 25, D.C.

ROBERT L. PIERCE

FILE COPY

Office-Supplies Co., U.S.  
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JUL 20 1950  
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TO: SAC, NEW YORK

FROM: SAC, NEW YORK

SUBJECT: [Illegible]

RE: [Illegible]

DATE: [Illegible]

BY: [Illegible]

FOR: [Illegible]

THROUGH: [Illegible]

BY: [Illegible]

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## STATUTES CITED

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(1)

# **In the Supreme Court of the United States**

**OCTOBER TERM, 1958**

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**No. 943**

**AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,  
APPELLANTS**

**v.**

**UNITED STATES OF AMERICA AND INTERSTATE COM-  
MERCE COMMISSION AND PACIFIC MOTOR TRUCKING  
CO. AND GENERAL MOTORS CORPORATION, APPELLEES**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

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**MOTION TO AFFIRM**

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Pursuant to Rule 16, paragraph 1(c) of the Re-  
vised Rules of this Court, the appellee Interstate  
Commerce Commission moves that the judgment of  
the District Court be affirmed.

## **STATEMENT**

This is a direct appeal from the judgment of a  
three-judge district court (Juris. St. pp. 42-43) dis-  
missing the appellants' complaint and sustaining the  
report and order (Juris. St. pp. 44-80) of the Inter-  
state Commerce Commission in *Pacific Motor Truck-*

ing Company Extension—Oregon (and embraced proceedings), 77 M.C.C. 605.

Pacific Motor Trucking Company (PMT) is a wholly owned subsidiary of the Southern Pacific Company, a carrier by rail, which operates rail lines in California, Oregon, Nevada, Arizona, New Mexico, and Texas. PMT possesses certain interstate motor common carrier operating authorities covering the transportation of general commodities, with certain named exceptions, over regular routes generally paralleling the rail lines of the rail parent (Juris. St. pp. 55-56, and 82). In addition, PMT's motor contract carrier operating authority prior to the challenged order of the Commission was accurately summarized in the opinion of the court below as follows (Juris. St. pp. 24-25):

PMT since December 10, 1935, has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and driveaway service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub 23, issued June 20, 1944); (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub 27, issued April 21, 1950); (3) from Raymer, California, to points in the Los Angeles Harbor Commer-

cial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950); and (4) from Oakland, California, to Carson City and Minden, Nevada, both being non-rail points (MC 78787, Sub 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications involved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California.

The opinion below also describes accurately the four applications for additional contract carrier permits pursuant to Section 209(b) of the Interstate Commerce Act (I.C.C. Docket No. MC-78787 (Sub Nos. 34, 35, 36 and 37)), filed by PMT between October 1955 and October 1956 (Juris. St. p. 25). Briefly, by these applications, PMT sought authority to transport in interstate commerce, as a contract carrier, new automobiles and trucks (1) from General Motors Corporation's (GM) Chevrolet plants at Oakland and Raymer (part of Los Angeles), to all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona and New Mexico, and (2) from General Motor's Buick-Oldsmobile-Pontiac plant, at South Gate (adjacent to Los Angeles) to all points in the same seven-state area except that Montana was substituted for New Mexico.

Following appropriate administrative proceedings upon the respective applications, together with oral argument before the entire Commission on all four

applications, the Commission, on September 9, 1958, issued the report and order here involved. In brief, the Commission authorized PMT to transport as a contract carrier new automobiles and trucks in initial movements from GM plants at Oakland, Raymer and South Gate, California, to three additional off-rail points in Nevada and to all points in Oregon, Nevada, Utah, Arizona, and New Mexico which are stations on the rail lines of the Southern Pacific Company. (See App. to Commission's report at Juris. St. p. 80.) Thus, the Commission denied PMT authority to serve any points in Idaho, Washington, and Montana, and restricted the authority granted in the other states to points which are stations on the Southern Pacific railroad. Also, the authority granted to PMT was made subject (1) "to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions, and limitations as the public interest and national transportation policy may require", and (2) to the condition that PMT request in writing that its outstanding interstate common carrier certificates of public convenience and necessity be restricted against the transportation of automobiles and trucks (Juris. St. p. 73).

The present action was commenced by the appellants in the court below on October 7, 1958. The appellants are three motor carrier trade associations and six motor carriers. The United States filed an answer stating that "the United States does not participate in the defense of the Commission's order but does not oppose its defense." On January 20,



1959, the three-judge court rendered its detailed and unanimous opinion sustaining the Commission's order on the merits.<sup>1</sup> (Juris. St. pp. 23-41, 170 F. Supp. 38.)

### ARGUMENT

1. Section 209(b) of the Interstate Commerce Act authorizes the Commission to issue a contract carrier permit where it appears (so far as here pertinent) "that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy." The challenged order of the Commission was issued pursuant to Section 209(b).

In *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419 (1951), and in *United States v. Texas & Pacific Motor Transport Co.*, 340 U.S. 450 (1951), the Supreme Court sustained the power of the Commission to impose upon the motor common carrier operations of a railroad or a rail affiliate, whether such operations are carried on pursuant to an acquisition under Section 5(2)(b) from an existing motor carrier or pursuant to a certificate of public con-

<sup>1</sup> The court also held, with Judge Bastian dissenting, that none of the appellants had standing to challenge the Commission's order. This standing issue was not raised by the Interstate Commerce Commission, but was urged by the intervening defendants PMT and GM. Since it is well settled that competing carriers may be so affected as to give them standing to challenge an order of the Commission authorizing additional service (*Alton R. Co. v. United States*, 315 U.S. 15, 19 (1942)), we submit that by itself the question of whether the court below correctly held that these appellant motor carriers lacked such standing in the circumstances of this case, is not of general importance.

venience and necessity for new or additional service pursuant to Section 207(a), conditions restricting such operations to those auxiliary and supplementary to the train service of the railroad. As reflected in those decisions, the five conditions customarily imposed for this purpose are the following: (1) motor service to be performed only at rail rates and on rail bills of lading; (2) service to be performed only at points which are stations on the railroad; (3) the local character of the motor service to be insured by the designation of key points between or through which shipments may not be transported by motor; (4) contracts between railroad and motor carrier affiliate to be subject to revision by the Commission; and (5) a reservation to the Commission of power to impose further conditions. Later, in *American Trucking Ass'n v. United States*, 355 U.S. 141 (1957), this Court sustained the Commission's power to authorize a rail affiliate to engage in unrestricted motor common carrier operations in special or unusual circumstances in which existing motor carriers cannot or will not meet shippers' transportation needs.

In the present case, the Commission authorized PMT to serve as a *contract carrier*<sup>2</sup> a single shipper,

<sup>2</sup> At the time of the Commission's decision in this case, Section 203(a) (15) provided that:

"The term 'contract carrier by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the

GM, in the transportation of a single commodity, new automobiles and trucks, from three GM assembly plants in California to points which are stations on the Southern Pacific railroad in Oregon, Nevada, Utah, Arizona and New Mexico.<sup>3</sup> The appellants challenge the power of the Commission "in the absence of 'special circumstances'" to "authorize a railroad subsidiary to conduct completely unrestricted motor contract carrier operations to all points on its parent railroad's lines" (Juris. St. p. 3).

In its report, the Commission held that the rationale of *American Trucking Ass'ns v. United States, supra*, applied to the grant of contract carrier permits to a rail affiliate (Juris. St. pp. 68-71). At the same time, the Commission explained why some of the five "auxiliary" and supplementary conditions (e.g., movement at rail rates and on rail bills of lading) could not be applied to the proposed contract carrier operations of PMT without converting them to common carriage (Juris. St. pp. 69-71). Thereupon, the Commission concluded (Juris. St. p. 71) that—

we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and

assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

<sup>3</sup> PMT already possessed California intrastate operating rights to deliver new automobiles and trucks for GM to all points in California.

independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific Railroad. Also a restriction is warranted reserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest.

Thus, the Commission specifically recognized that in determining applications by a rail affiliate for contract carrier authority under Section 209(b), it must take into account the policy of the proviso of Section 5(2) (b) against unrestricted entry into or dominance of motor transportation by railroads. As this Court noted in *United States v. Rock Island Motor Transit Co., supra*, the phrase "auxiliary and supplementary" nowhere appears in the Interstate Commerce Act, but is simply a short-hand phrase for the five conditions which the Commission usually imposes upon common carrier certificates issued to railroads or their affiliates, so as to implement the Congressional policy in the proviso to Section 5(2)(b). Indeed, Section 209(b), as this Court pointed out as to Section 207(a), contains no "language even suggesting a mandatory limitation to service which is auxiliary or supplementary" (*American Trucking Ass'ns v. United States*, 355 U.S. at 149). *A fortiori*, Section 209(b) does not prescribe specific limitations which must be imposed

under the "guiding light" of Section 5(2)(b). Rather, as this Court has held, the imposition of varying conditions to different circumstances is "an exercise of the discretionary and supervisory power with which Congress has endowed the Commission" (*United States v. Rock Island Motor Transit Co.*, 340 U.S. *supra*, at 442).

Here, the Commission found that for physical reasons contract carrier service by PMT could best meet the specialized needs of GM in the distribution of new automobiles and trucks to a highly competitive market.<sup>4</sup> Section 209(b), on its face, is a Congressional recognition that certain shippers need a specialized transportation service, integrated with their manufacturing operations, which is clearly distinguishable from the nondiscriminatory service which a common carrier must provide. The competitive effect of permitting a rail affiliate to perform such specialized service for a single shipper (which is unwilling to, and may not be compelled to, use the service of existing independent motor carriers) is so limited that the anti-monopoly objectives of Section 5(2)(b) are satisfied by restricting the service to points which are already served by the railroad (particularly since the railroad already had the traffic involved).

Moreover, the reservation of power to impose future conditions upon the contract carrier operations which PMT was authorized to perform, is valid and enforceable (*United States v. Rock Island Motor*

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<sup>4</sup> We need not emphasize the impact upon a major automobile manufacturer, its employees, suppliers and distributors of any serious inadequacy in the outbound movement of its products.



*Transit Co., supra*), and gives to the Commission "continuing jurisdiction to make certain that the \* \* \* [permit] issued here does not operate to defeat the National Transportation Policy" (*American Trucking Ass'ns v. United States*, 355 U.S. *supra*, at 154).

We submit that the court below was clearly correct in holding that the Commission's action was consonant with the Congressional policy as interpreted by this Court.

2. The appellants' second question presented is "Whether the District Court correctly found the existence of 'special circumstances' justifying the performance of unrestricted motor service by the rail subsidiary, such findings being directly contrary to those of the Commission itself?" (*Juris. St. p. 3*). It is sufficient to point out that the Commission found that there were not present "unusual circumstances" which would warrant authorizing PMT to perform contract carrier service which was not (1) restricted to points which are stations on the parent railroad, and (2) subjected to the future imposition of additional conditions (*Juris. St. p. 71*). In contrast, the language in the opinion below which is attacked by appellants is that (*Juris. St. pp. 34-35*):

\* \* \* although the Commission found an "absence of unusual conditions" which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM.

Read in context, the quoted language of the court below clearly means only that it found the Commission's partial grant of PMT's application warranted in the light of such factors as effect upon other carriers and GM's transportation needs. We submit that the contention is without merit.

3. Appellants contend that the Commission's action violates the prohibition of Section 210 (49 U.S.C. 310) against the same person holding a *motor* common carrier certificate and a *motor* contract carrier permit "for the transportation of property by motor vehicle over the same route or within the same territory," unless the Commission finds "that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act."

The Commission's detailed discussion of this dual operations issue is found both in its final report (Juris. St. pp. 71-73) and in its prior report in 71 M.C.C. 561 at 563-564 (Juris. St. pp. 85-88) (involving PMT contract carrier service for GM to points in Oregon), which it referred to and adopted in the final report. In its final report, the Commission specifically recognized that "the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier by rail" (Juris. St. p. 72).

The Commission dealt with dual common and contract motor carrier operations by PMT in the transportation of automobiles and trucks by providing that the challenged grants of contract carrier authority

"will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding [common carrier] certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation." (Juris. St. pp. 72-73). This condition has been complied with. Since Section 210 is directed at the possibility for discrimination which exists when a single carrier may offer both common and contract motor carrier service to the same shippers (i.e., of the same commodities and over the same routes), it is clear that the imposition of this condition warranted the Commission's finding that the holding by PMT of common carrier certificates and contract carrier permits "will be consistent with the public interest and the national transportation policy."

Section 210 is silent as to the holding of a contract motor carrier permit by a subsidiary of a railroad common carrier. Nevertheless, the Commission in its prior report (Juris. St. p. 85) held that "we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed." In finding that such dual motor-rail authority should not be a bar under Section 210 to a grant of additional contract carrier

authority to PMT, the Commission properly based its conclusions upon such factors as that the contract carrier operations would be restricted to a single shipper, and that such dual authority (based upon PMT's pre-existing contract carrier authority) had not resulted in the evils at which Section 210 is directed (Juris. St. pp. 87-88).

Moreover, in its final report (Juris. St. p. 73), the Commission added that "our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider the issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference." We submit that the Commission's action is wholly consistent with Section 210.

4. The appellants contend that the court below erred in that it "by indirection, seems to have concluded" that the 1957 amendments to the definition of "contract carrier" in Section 203(a)(15) (*supra*, p. 6, fn. 2) and to the standards of Section 209(b) (Juris. St. pp. 29-30) governing the grant of contract carrier permits, "somehow placed a motor contract carrier application by a rail affiliate in a different light than its application to perform motor common carriage" (Juris. St. pp. 14-17). As pointed out above, the Commission both considered and applied in this case the policy of the proviso to Section 5(2)(b). Moreover, it is beyond dispute that the Commission was required, when it decided the applications on September 9, 1958, to apply the criteria which had been inserted in Section 209(b) by the 1957 amendments. *Ziffrin*,

*Inc. v. United States*, 318 U.S. 73, 78 (1943). Thus, appellants' contention reduces to the assertion, in the face of *American Trucking Ass'ns v. United States*, *supra*, that a motor carrier controlled by a railroad may under no circumstances engage in contract carrier operations. The argument is without merit, when the narrow and specialized character of contract carriage as defined in Section 203(a)(15), as amended, is viewed in the rationale of the *American Trucking Ass'ns* case.

### CONCLUSION

For the foregoing reasons, we submit that the decision below is correct and that this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted.

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JUNE 1959.

### CERTIFICATE OF SERVICE

I, Robert W. Ginnane, General Counsel of the Interstate Commerce Commission, one of the appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the twenty-fourth day of June, 1959, I served copies of the foregoing Motion to Affirm on the several parties to this appeal, as follows:

1. On the appellants, by mailing copies, in duly addressed envelopes, with first-class postage prepaid



to Peter T. Beardsley, Esq., 1424 Sixteenth St. N.W., Washington 6, D.C., Charles W. Singer, Esq., 1825 Jefferson Place N.W., Washington 6, D.C., and Larry A. Eskilsen, Esq., 1111 E St. N.W., Washington 4, D.C., and, with airmail postage prepaid, to Walter N. Bieneman, Esq., 2150 Guardian Building, Detroit 26, Michigan.

2. On the United States of America, appellee, by mailing copies, in duly addressed envelopes, with first-class postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D.C., and John C. Danielson, Esq., Room 3208, Department of Justice Washington 25, D.C.

3. On Pacific Motor Trucking Co., appellee, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert L. Pierce and William E. Meinhold, Esqs., 65 Market Street, San Francisco 5, California, and with first-class postage prepaid, to Edward M. Reidy and Thormund A. Miller, Esqs., 205 Transportation Building, Washington 6, D.C.

4. On General Motors Corporation, appellee, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Henry M. Hogan and Walter R. Frizzell, Esqs., 3044 West Grand Blvd., Detroit 2, Mich., and with first-class postage prepaid, to Beverley S. Simms, Esq., 612 Barr Bldg., 910 17th St. N.W., Washington 6, D.C.

ROBERT W. GINYANE.

No. 74

IN THE  
**Supreme Court of the United States**

October Term, 1959

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,

*Appellants,*

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION,

and

PACIFIC MOTOR TRUCKING CO. AND GENERAL MOTORS  
CORPORATION,

*Appellees.*

On Appeal From the United States District Court  
for the District of Columbia

**REPLY TO MOTIONS TO AFFIRM**

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On Appeal From the United States District Court  
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**REPLY TO MOTIONS TO AFFIRM**

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**Preliminary**

Because we believe the questions involved in this proceeding are of paramount importance in the administration of the Interstate Commerce Act by the Commission, and to the two major regulated industries involved, appellants, pursuant to the provisions of Rule 16(3), file this reply to the separate motions to affirm filed by the Interstate Commerce Commission, and jointly by Pacific Motor Trucking Company and General Motors Corporation.

**This Proceeding Involves New Questions of Great Importance in the Administration of the Interstate Commerce Act.**

As might be expected, each of the appellees<sup>1</sup> contends that the appeal presents no substantial question. We submit, to the contrary, that a very substantial question is involved by virtue of the Commission's failure to follow this Court's recent decision in the *A.T.A.* case (*American Trucking Assn's., Inc. v. U.S.*, 355 U.S. 141). Although appellees admit, as they must, that the Commission's report and order here is not justified, as was its report and order in the *A.T.A.* case, on the basis of "special circumstances" found to exist there, they nevertheless insist that this Court should affirm the Commission's decision. Since, they say, the rail subsidiary (PMT) has been "restricted" to service to points on its rail parent's system,<sup>2</sup> and since the Commission is powerless to invoke the limitations usually imposed in order to assure that motor service rendered by a rail affiliate will supplement, not compete with, that of the rail parent, appellees argue that the Commission has conformed to the statute and the underlying Congressional policy. Acceptance of appellee's argument, which largely begs the questions here involved, will result in the complete emasculation of that policy, intended to severely limit rail opportunity to perform truck operations unrelated to their rail service. This alone, we respectfully submit, justifies the noting of jurisdiction and review on the merits.

<sup>1</sup> As noted by the Commission (p. 4), the United States does not defend the Commission's order in this case.

<sup>2</sup> The Southern Pacific's rail system extends for 8,000 miles in the area involved. *Transport Statistics in the U.S.*, 1957 (I.C.C.), Part 1, p. 403. In a masterpiece of understatement, appellees PMT and General Motors characterize the vast increase over the insignificant interstate contract carrier authority previously authorized (Jurisdictional Statement, p. 4) as a "relatively minor extension." (Motion to Affirm, p. 20).



Additionally, the right of the plaintiffs to bring the action, a matter originally raised and vehemently argued by appellees PMT and General Motors before the District Court, but which they now seek to slough off as of no consequence, presents still another important federal question meriting review. If the standing of protestants before the Commission to seek review of its decisions having important bearing on their business life can be so easily defeated as the majority of the court below held, the provisions of the Interstate Commerce Act and the Administrative Procedure Act relating to judicial review do not mean what they plainly say. If, after nearly twenty-five years of federal regulation of interstate motor carriage, this is the law, we submit that this Court should say so. On the other hand, if the court below erred, its holding should be quickly corrected, in order to prevent the misunderstandings otherwise certain to follow.

**The Commission's Report and Order Squarely Conflicts With This Court's Recent A.T.A. Decision and Should be Reviewed and Set Aside.**

None of the appellees finds any comfort in the lower court's ruling that "special circumstances" justify the Commission's action, which ruling is directly contrary to the finding of the Commission that PMT failed to show any "unusual conditions" as justification for the authority granted. Even appellees PMT and General Motors concede that the Commission's grant of authority was not based "on the existence of 'special circumstances.'" (Motion to Affirm, p. 10) All appellees, however, contend that the Commission was powerless to attach the conditions usually imposed in authority issued to rail subsidiaries<sup>3</sup> because, they say, such action would have re-

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<sup>3</sup> Including a requirement that the traffic move on rail billing and at rail rates, and either a prior or subsequent rail-haul or so-called key-point restriction, designed to limit the motor operations to service auxiliary to that of the rail parent's.

sulted in converting the proposed PMT contract operations into common carriage. (I.C.C. Motion, p. 7).

As we read the *A.T.A.* decision, this Court has squarely held that the Commission may authorize unrestricted service by railroads or their affiliates *only* where special circumstances justify an exception to the contrary Congressional policy. Although appellees do not appear to seriously contend otherwise, they attempt to avoid the consequences of accepting that interpretation by arguing that the authority granted to the rail subsidiary here is, in reality, restricted in conformance with the requirements of the proviso of § 5(2)(b) of the Act. PMT and General Motors say, at pp. 5-6 of their motion, that the "basic flaw" in our argument is our description of the rights as "unrestricted." The Commission, at page 9 of its motion, contends that "the anti-monopoly objectives of Section 5(2)(b) are satisfied by restricting the service to points which are already served by the railroad. . ." These contentions, though phrased differently, amount to the same thing: that the Commission, by geographically or territorially limiting the authority granted, has conformed to the Congressional policy applicable in cases of this kind. In our Jurisdictional Statement (pp. 15-16) we pointed out the absurdity of this contention. Every application for motor-carrier authority before the Commission involves some territorial limitation and such a "restriction" cannot be construed as limiting the operations here involved to service which is auxiliary and supplemental to that of PMT's rail parent. More than a decade ago, appellees' contention was rejected by the Commission, in *Rock Island Motor Transit Co.—Purchase—White Line*, 40 M.C.C. 457. There (at p. 470) the Commission noted that "there also appears to have developed a tendency in rail-motor acquisition proceedings to treat the *Barker* case restrictions as geographical or territorial only in their intent rather than as substantive limitations upon the character of the service which might

be rendered by a railroad or its affiliate under any acquired right." (Emphasis by the Commission) In a somewhat lengthy discussion (pp. 471-472), the Commission completely disposed of the contention that territorial limitation of a rail affiliate's motor authority satisfies the Congressional policy underlying Section 5(2)(b). For brevity, we quote the opening sentence and concluding paragraph of the discussion:

Despite whatever color of support may be found for the thought that the "approved" operations of the vendee in the *Barker* case, were limited only territorially and not as respects the character of the service which might be rendered, we are convinced there was no such intent and that the reports should not be so construed or applied.

. . . . .

In these circumstances and contrasting the language used and the supporting discussion with the much simpler language which would have been adequate if it had been intended to restrict future operations of the vendee only territorially, it is clear that any tendency to treat the *Barker* case as an approval of future rail-motor operations which should be unrestricted except territorially, ignores the clear declaration that certain types of operations are disapproved wherever conducted, and must spring from a misinterpretation of the intent of the reports therein.

Appellees argue that the Commission further "restricted" the grant of authority to the rail subsidiary by reserving the right to impose, in the future, conditions required by the "public interest and national transportation policy." Jurisdictional Statement, p. 71. The utter futility of the "imposition" of this so-called restriction is found in the Commission's report itself, wherein it held that restrictions usually imposed upon railroad truck operations could not here be imposed "for to do so would be to command the holder to render a common-carrier service." Jurisdictional Statement, p. 71. If the Com-

mission's rationale is valid today it will be so tomorrow, or at any future time at which it might seek to exercise the reserved right to impose additional "restrictions." Thus the Commission clearly points the way to railroads seeking to avoid the imposition of auxiliary and supplemental limitations upon their truck service: use the avenue of contract carriage.

Before leaving this point, we comment briefly upon the Commission's rather plaintive statement, at page 10 of its motion, that it cannot compel General Motors' Chevrolet Division to "use the service of existing independent motor carriers" and its complete misstatement, at page 14, of our position.

We would be the first to admit that no shipper, large or small, can be forced to use the service of any carrier. But the Commission, as it has in many cases involving independent motor carriers, could have told General Motors in effect to use the services of existing carriers, or to institute proprietary operations. That is precisely what the Commission told General Motors' Cadillac Division in *Boutell Driveaway Co., Inc., Ex. — Cadillacs and Buicks*, decided April 10, 1959. — M.C.C. — The difference between *Boutell* and this proceeding is that there, in denying that application, the Commission noted that the Cadillac Division of General Motors "has no objection to using the services of a motor carrier merely because it also serves its competitors." Of course, GM's Chevrolet Division, the supporting shipper here, has a contrary policy. While these differing policies are nobody's business so long as they are confined within the GM family, they become a matter of great public concern when the Commission, as it did here and in *Boutell*, draws completely opposite conclusions based thereon. This is particularly true where the result of the Commission's inconsistency, as here, is to bestow favored treatment upon a rail affiliate, despite the contrary Con-

gressional policy. This policy, which the Commission has here consigned to limbo, clearly requires rail applicants for motor authority to meet a heavier burden than that imposed upon independent motor carriers seeking new rights. The Commission so held in the *White Line* case, *supra*, 40 M.C.C. 473-474, and that holding has been noted with apparent approval by this Court on several occasions. See, e.g., *U. S. v. Rock Island Motor Transit Co.*, 340 U.S. 419, 428 (fn.) and *American Trucking Assn's. v. U. S.*, 355 U.S. 141, 151.

The Commission's Motion to Affirm also includes (p. 14) the rather startling statement that "appellants' contention reduces to the assertion, in the face of *American Trucking Assn's. v. United States*, *supra*, that a motor carrier controlled by a railroad may under no circumstances engage in contract carrier operations."

This misinterpretation of our position is completely unjustified. What we have said, we thought rather plainly, was that this Court's *A.T.A.* decision made clear that unrestricted motor service by railroads or their affiliates, whether in common or contract carriage, would not be permitted *except where special circumstances were shown* to justify a departure from the Congressional policy to the contrary. If this correctly reflects what this Court held in the *A.T.A.* case, then the Commission's award of such authority to the rail subsidiary here is altogether unjustified and its misstatement of our position cannot overcome the infirmity of its action.

**The Commission's Report and Order Substantially  
Departs From Its Previous Rulings Respecting Dual  
Operations.**

Appellees contend that the Commission has thoroughly considered the question of dual operations resulting from PMT holding both a certificate and permit from the Commission and Southern Pacific's operations as a rail com-



mon carrier. It is significant that none of them, however, have pointed to any evidence in the record before the Commission to justify the grant of dual authority which it made. The statutory requirement of Section 210 is that a grant of dual authority may not be awarded except "for good cause shown." Whatever the maximum requirements of the quoted phrase, we submit that as a minimum it demands more than a mere assumption by the Commission that the applicant before it will not take advantage of a grant of dual authority to engage in unfair or discriminatory practices which Section 210 is intended to circumscribe.

• It is apparent that the Commission's report and order represents a substantial departure from its previous rulings on this issue. The extent to which its report and order departs from, and is contrary to, the policies evidenced by Section 210 of the Interstate Commerce Act is best illustrated by the dissenting expression of Commissioner Murphy (Jurisdictional Statement, p. 79):

• • • In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by Section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved, and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of Section 210.

In an attempt to justify the Commission's findings, appellees point to the fact that PMT's certificates have been restricted against the transportation of automobiles and

trucks here involved. PMT as a common carrier, however, will be in a position to transport general freight (other than automobiles and trucks) upon behalf of General Motors; and Southern Pacific will be in a position to continue to engage not only in the substantial inbound movement of frames and parts used by General Motors, but in the transportation of automobiles and trucks moving to the same consignees authorized to be served by PMT as a contract carrier. Moreover, the fact that the Commission found that prior dual operations have not been shown to have resulted in the evils at which Section 210 is directed is not controlling. As pointed out by Commissioner Murphy, and as found by the Commission in numerous prior decisions, the mere opportunity to engage in discriminatory practices has been found sufficient to warrant disapproval of dual operations. Stated differently, the Commission has said the door must be closed to even the possibility of a carrier serving the same shipper as a contract and common carrier. *P. J. Hamill Transfer Co., Extension—St. Louis County*, 51 M.C.C. 641, *Park-Davis Lines, Inc., Contract Carrier Application*, 51 M.C.C. 787, *Smith and Melton—Extension—Missouri*, 51 M.C.C. 627.

The Court below gave only cursory consideration to the question of dual operations. It therefore remains for this Court to determine whether the Commission may issue a permit to a railroad's motor carrier subsidiary under the circumstances here shown to exist.

**The Holding of the Majority Below That Plaintiffs Lacked Standing to Sue is Clearly Erroneous and Requires Correction by This Court.**

Having raised the point that plaintiffs lacked standing to sue, and having prevailed on the majority of the court below, appellees PMT and General Motors, in their motion to affirm (p. 2) now blandly suggest, via footnote,

that there is "no occasion for this Court to consider the propriety of such holding." The motion filed by the Commission (p. 5), again by footnote, seems almost to concede that the majority below erred, but at the same time states that the question "is not of general importance." To the contrary, we submit that the broad holding of the court below, if not promptly corrected by this Court, cannot fail to cause great mischief in future proceedings instituted to test the correctness of Commission orders, and those of other administrative agencies. In short, Pandora's box has been opened and this Court will have to close it, if it is to be closed at all. This being so, no good purpose would be served by allowing the original error of the court below to become compounded by additional rulings based thereon before corrective action is taken. If, as we contend, and as the Commission seems to agree, the majority of the court below erred in holding that plaintiffs lacked standing to sue, now is plainly the time for this Court to set the matter straight. We pointed out in our Jurisdictional Statement (p. 17, et seq.) the consequences which will flow from failure to reverse the District Court's holding. Nothing more need be said here.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

1. Peter T. Beardsley, one of the attorneys for appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the tenth day of July, 1959, I served copies of the foregoing document on the several parties thereto, as follows:

1. On the United States, by mailing copies, in duly addressed envelopes, with postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C., and Willard R. Memler, Esq., Department of Justice, Washington 25, D. C.

2. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Esq., Assistant General Counsel, at the offices of the Commission, Washington 25, D. C.

3. On Pacific Motor Trucking Co., by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert L. Pierce and William E. Meinhold, Esqs., 65 Market Street, San Francisco 5, California, and with postage prepaid, to Edward M. Reidy and Thormund A. Miller, Esqs., 205 Transportation Bldg., Washington 6, D. C.

4. On General Motors Corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Henry M. Hogan and Walter R. Frizzell, Esqs., 3044 West Grand Blvd., Detroit 2, Mich., and with postage prepaid, to Beverley S. Simms, Esq., 612 Barr Bldg., 910 17th Street, N. W., Washington 6, D. C.

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IN THE  
**Supreme Court of the United States**

October Term, 1959

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,  
*Appellants,*

v.

UNITED STATES OF AMERICA and  
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and

PACIFIC MOTOR TRUCKING CO. and  
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*Appellees.*

On Appeal from the United States District Court  
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No. 74

IN THE

**Supreme Court of the United States**

October Term, 1959

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AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,  
*Appellants,*

v.

UNITED STATES OF AMERICA and  
INTERSTATE COMMERCE COMMISSION,  
and

PACIFIC MOTOR TRUCKING CO. and  
GENERAL MOTORS CORPORATION,  
*Appellees.*

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On Appeal from the United States District Court  
for the District of Columbia

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**APPELLANTS' BRIEF ON THE MERITS**

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**OPINION BELOW**

The opinion of the United States District Court for the District of Columbia (R. 70) is reported at 170 F. Supp. 38. The consolidated report and order of the Interstate Commerce Commission in the Sub. 34-37 cases (R. 8) is reported at 77 M.C.C. 605; its first report and order in the Sub. 34 case (R. 54) is reported at 71 M.C.C. 561.

## JURISDICTION

The judgment of the District Court (R. 87) was entered on January 30, 1959, and notice of appeal (R. 88) was filed on March 27, 1959. Probable jurisdiction was noted on October 12, 1959 (R. 92), 361 U.S. 806. Jurisdiction to review the decision on direct appeal is conferred by Sections 1253 and 2101(b) of the Judicial Code, 28 U.S.C. §§1253 and 2101(b).

## STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding §1, and Sections 5(2)(a) and (b), 17(9), 205(g) and (h), 207(a), 209(b), and 210 of the Interstate Commerce Act, 49 U.S.C. §§5(2)(a) and (b), 17(9), 305 (g) and (h), 307(a), 309(b), and 310, are set forth verbatim in Appendix A hereof.

## QUESTIONS PRESENTED

1. Whether the Interstate Commerce Commission, in the absence of "special circumstances" such as those disclosed in *American Trucking Associations, Inc., et al. v. U.S.*, 355 U.S. 141, may authorize a railroad subsidiary to conduct completely unrestricted<sup>1</sup> motor contract carrier operations to all points on its parent railroad's lines?

2. Whether the District Court correctly found the existence of "special circumstances" justifying the performance of unrestricted motor service by the rail subsidiary, such findings being directly contrary to those of the Commission itself?

3. Whether the 1957 amendments to the provisions of the Interstate Commerce Act, Part II, dealing with motor

<sup>1</sup> Undoubtedly appellees will argue, as they did before the District Court, that the authority granted is not "unrestricted." We deal with this matter at pp. 31-34, *infra*.

contract carriers, were intended to alter the Congressional policy against rail entry into the motor carrier field?

4. Whether the Interstate Commerce Commission, without satisfying the requirements of, or observing the policy underlying, §210 of the Interstate Commerce Act, may validly issue a contract carrier permit to a railroad's motor-carrier subsidiary under the following circumstances:

a. Where the subsidiary also holds a common carrier certificate authorizing the transportation of closely-related commodities for the same shipper and receivers and within the same territory?

b. Where the parent company engages in transportation of the same commodities as a rail common carrier, for the same shipper and receivers, as well as competing automobile manufacturers and their dealers, within the same territory?

5. Whether independent motor carriers, found by the Commission to be "authorized to conduct the proposed operations" and motor-carrier associations, all of whom were protestants before the Interstate Commerce Commission, have standing to bring suit to set aside its report and order authorizing unrestricted motor service by a rail subsidiary?

### STATEMENT

Basically, this case involves the validity of the action of the Interstate Commerce Commission in authorizing Pacific Motor Trucking Co. (hereinafter PMT), a wholly-owned subsidiary of the Southern Pacific Co., a common carrier by railroad, to perform unrestricted motor contract carriage over a wide area in the western United States, in the absence of any finding of special circumstances justifying such a grant of authority, and indeed in the teeth of a finding by the Commission (77 M.C.C. 623; R. 31) that there had been no showing of "unusual conditions."

The Commission's consolidated report and order dated September 9, 1958, granted authority to transport General Motors' automobiles and trucks from assembly plants at Oakland, Raymer and South Gate, Calif., to all points on the lines of the parent railroad in Arizona, Nevada, New Mexico, Oregon and Utah, as well as the off-line points of Austin, Tonopah, and Yerington, Nevada, as more specifically set forth in the appendix therein (77 M.C.C. 629; R. 39).

PMT, in addition to the contract operations here involved, also conducts widespread motor common carrier operations,<sup>2</sup> largely restricted to so-called auxiliary and supplemental service (77 M.C.C. 612-613; R. 18). Its present interstate contract carrier operations<sup>3</sup> are relatively negligible, being limited to authority to transport new General Motors' automobiles, trucks and buses (1) from Oakland, Calif. to Hawthorne, Carson City and Minden, Nevada, and points in Nevada on its rail parent's lines, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. (77 M.C.C. 613; R. 18).<sup>4</sup> Its applications to secure its present contract carrier rights were unopposed before the Commission.

<sup>2</sup> The scope of PMT's common carrier operations can be gauged somewhat by the fact that its operating certificate (Exhibit 30 in the Sub. 37 case) consists of 78 pages. For the 11 months ended Nov. 30, 1956, its operating revenues exceeded 26 million dollars. R. 361.

<sup>3</sup> Although, the extensive authority granted by the Commission in the proceedings under review has become effective through refusal of the District Court to issue a temporary restraining order, we shall, for clarity, refer to PMT's "present" authority as that existing prior to the instant grant.

<sup>4</sup> A better indication of the relative insignificance of PMT's "present" interstate operations is found in the statement of its counsel. Of total movements by PMT in 1955 of 175,951 vehicles, only 6,100, or less than 3.5%, moved interstate. R. 468-469.

By applications filed on the dates noted, PMT sought authority to provide unrestricted motor contract carrier service as a transporter of new General Motors automobiles, trucks and buses, from and to the points shown:

Sub. No.	Date Filed	Origin	Destination
34	10/14/55	Oakland, Calif.	Points in Oregon which are stations on the lines of PMT's rail parent.
35	3/ 5/56	Oakland, Calif.	Austin, Tonopah, and Yerington, Nev.
36	3/ 9/56	Raymer, Calif.	Points in Arizona which are stations on the lines of PMT's rail parent.
37	10/23/56	Oakland, Calif.	Points in Ariz., Idaho, Nev., N. M., Ore., Utah, and Wash.
		Raymer, Calif.	Points in Ariz., Idaho, Nev., N. M., Ore., Utah, and Wash., with specified exceptions.
		South Gate, Calif.	Points in Ariz., Idaho, Mont., Nev., Ore., Utah and Wash.

In the Sub. 34 and 35 cases, a Joint Board and examiner, after hearings, recommended that PMT's applications be granted, but the Commission, division 1, stayed the taking effect of the recommended orders pending further order of the Commission. In the Sub. 36 and 37 cases, a joint board and examiner recommended that the applications be granted. While the latter two cases were pending on exceptions before the Commission, it issued its first report and order in the Sub. 34 case, *Pacific Motor Trucking Co., Ext., Oregon*, 71 M.C.C. 561, approving the relatively limited authority there sought. Upon petition, the Commission granted reconsideration in the Sub. 34 case and consolidated all four proceedings for disposition in one report. By its report and order dated September 9, 1958, the Commission, by a 5-4 division,<sup>5</sup> authorized the broad grant of unrestricted authority here involved.

<sup>5</sup> Commissioners Minor and Goff did not participate. Although Commissioner Walrath also did not participate, his statement, at 77 M.C.C. 629 (R. 38), makes clear that for all practical purposes he may be counted as dissenting.



On appeal, the District Court upheld the Commission's order, but found, contrary to the Commission's holding, that "special circumstances" justified the grant of authority. (170 F. Supp. 45; R. 81). Further, a majority of the court below held, as urged by intervening defendants PMT and General Motors but not the Commission, that plaintiffs lacked standing to challenge the Commission's order. (170 F. Supp. 48; R. 86).

### SUMMARY OF ARGUMENT

1. The Congressional policy embodied originally in Sections 202(a) and 213 of the Motor Carrier Act, 1935, now included in the National Transportation Policy and Section 5(2)(b) of the Interstate Commerce Act, respectively, was clearly intended to prevent all-out rail entry into the motor carrier field. As interpreted by the Commission and this Court,<sup>6</sup> this intent has been translated into the practice of allowing railroad use of motor vehicles to improve overall train service—for example, by substituting the truck for the slow and cumbersome way-train or peddle car out of large break-bulk points on the rail's lines—a type of service now commonly identified as "auxiliary and supplemental." At the same time, railroads have consistently been rebuffed in their efforts to enter the field of truck service on the same basis as independent motor carriers, in all-out competition with such carriers, and indeed, with their own rail service. The one notable exception to this consistent application of the underlying Congressional policy was the Commission's recent decision in *Rock Island Motor Transit Co. Common Carrier Application*, 63 M.C.C. 91, affirmed, *American Trucking Assn's. v. United States*, 355 U.S. 141, hereinafter some-

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<sup>6</sup> Largely in cases involving applications to perform motor common carrier service. However, the Commission's report here involved concedes that "the same principle" applies whether a railroad or its affiliate seeks motor common or contract carrier rights. 77 M.C.C. 621-622; R. 29.

times called the *A.T.A.* case. The Commission's decision, allowing the rail subsidiary to perform unrestricted truck service, was based solely on its finding of "exceptional circumstances," i.e., the failure of the independent motor-carrier protestants to render adequate service in the area involved. Here, the Commission specifically found an "absence of any showing of unusual conditions in these proceedings." (77 M.C.C. 623; R. 31) In view of this finding, we submit the Commission had no proper alternative except to deny the application or so condition its grant of authority as to allow the performance only of auxiliary and supplemental service by the rail subsidiary. It did neither. To be sure, the Commission paid lip service, in a way, to this Court's decision in the *A.T.A.* case, *supra*, when it quoted in passing (77 M.C.C. 621; R. 29) the language from its opinion which so clearly discloses that the Commission does not have a free hand in issuing motor rights to railroads or their affiliates.<sup>7</sup> But, to paraphrase the language of Mr. Justice Frankfurter, dissenting, in *United States v. Parke, Davis & Co.*, 28 U.S.L. WEEK 4150, 4159 (U.S. March 1, 1960), it is surely the emptiest of formalisms to profess to follow this Court's *A.T.A.* decision, while eviscerating it in application.

The Commission has held, on numerous occasions, that a shipper's preference for the services of a given carrier

<sup>7</sup> In addition to the language from this Court's decision in the *A.T.A.* case quoted by the Commission, the following appears to us to be equally pertinent here: "We find no indications that the Commission has permitted the §207 proceedings in this case to be used as a device to evade §5(2)(b) restrictions. \* \* \* Finally, if under our interpretation a 'loophole' exists in the Act, the Commission has shown no inclination to permit its use as such. Should the Commission prove to be less stringent in the future, appellants not only have recourse to the Congress, but also to the courts for review of the Commission's finding that 'special circumstances' exist." 355 U.S. 152. It is precisely because we believe the Commission has allowed the §209 proceedings here to be used as "a device to evade §5(2)(b) restrictions" that this suit was instituted.

does not justify a grant of authority. It has likewise held, in one of its leading cases in this field, that a rail applicant has a special burden, not assumed by independent carriers, which must be met before it can be granted motor-carrier authority. This special burden was not satisfied by the Commission's conclusion that the rail-subsidiary applicant had met the requirements of Section 209(b) of the Act, since that merely states the requirements for authorizing the performance of contract carriage by independent motor carriers. Under this Court's recently announced decision in *American Trucking Associations, Inc. v. United States*, *supra*, the applicant was required to go further and establish "special circumstances" justifying such a grant. That it did not do so is clearly shown by the Commission's finding that the record before it reflected the absence of any "unusual conditions." Thus the Commission's award of authority under the circumstances of this case flouts Congressional policy and ignores its own precedent cases. In addition, it violates the mandate of the National Transportation Policy requiring fair and impartial treatment of the various modes of transport by establishing a far more lenient standard for rail-owned motor carriers than for their independent competitors, though the statute plainly calls for exactly opposite treatment.

2. The finding of the District Court that various evidentiary matters going to past handling of General Motors' traffic by PMT, the physical layout of GMC-PMT facilities, the claimed need for the extension of PMT's service, and GM's steadfast refusal to do business with any of the independent motor-carrier protestants, constituted "substantial evidence of special circumstances" (170 F. Supp. 45; R. 81), merely quarrels with the contrary conclusion reached by the Commission. Nowhere in its opinion did the District Court spell out, or even intimate, the basis for its disagreement with the Commission's conclusion. Under long-familiar holdings of

this Court, a reviewing court may not substitute its judgment for that of the Commission unless the latter's findings are clearly erroneous. Since the opinion of the court below in no way discloses that the Commission's finding of an absence of any "unusual conditions" was unsupported by the record, its contrary finding of "special circumstances" may not stand.

3. The intimation in the District Court's opinion (170 E. Supp. 44; R. 79) that the recent amendment to Section 209(b) of the Act has a bearing on the issues here is, we submit, erroneous. The clearly expressed purpose of the statutory change was to overcome this Court's decision in *United States v. Contract Steel Carriers, Inc.*, 350 U.S. 409. Manifestly, there was no intent to repeal by implication the Congressional policy against unrestricted truck service performed by railroads or the many court and Commission decisions requiring rail applicants for such authority to satisfy a special burden not required of independent motor carriers.

4. The authority granted the rail subsidiary to perform dual operations as both a motor common and contract carrier, while at the same time its rail parent provides service to the same shipper, as well as its competitors, violates the requirements of Section 210 of the Interstate Commerce Act. That section requires that dual authority may not be granted unless, "for good cause shown," the Commission finds that the holding of such dual authority is consistent with the public interest and the National Transportation Policy.

The Commission, in interpreting the language of Section 210, has often held that the mere opportunity to engage in discriminatory practices is sufficient to warrant disapproval of dual operations. Yet here, where the opportunity for such practices is greatly enhanced by the service of the railroad being added to the dual service of its motor subsidiary—a factor not present when the

applicant is an independent motor carrier—the Commission has completely ignored the statutory requirement that it may not grant dual authority except “for good cause shown.” Whatever quantum of proof is required in individual cases, the fact must surely be that some evidence is required in order to invoke the statutory exemption from the bar which otherwise prohibits such operations. Yet here, the rail-subsidary applicant introduced no testimony whatever to justify its exemption from the prohibition, and the Commission’s grant of authority in the report here under attack merely relies on its earlier report in the Sub. 34 case (77 M.C.C. 623; R. 31.) But when the earlier report is examined (71 M.C.C. 564-565; R. 60), it is noted that applicant likewise failed to introduce any evidence there to support a dual authority grant. Not only that, but the Commission took applicant to task for its failure (*Id.*, at 565; R. 60). The Commission’s grant of dual authority, being completely without evidentiary support, is arbitrary and capricious and ignores the statutory requirement that applicants for dual authority must show “good cause” to justify its issuance.

5. The holding of a majority of the court below that plaintiffs lacked standing to sue to challenge the Commission’s order here, is, we respectfully submit, erroneous. The basis for that holding, urged by the intervening defendants, but not the Commission, is the fact that applicant’s supporting shipper, General Motors, insisted that it would give none of its business to any of the independent motor protestants. This attitude of General Motors was not based on any feeling that the protestants were not capable of rendering a satisfactory service, but rather that they were somehow “tainted” since they had performed service for Ford, Chrysler, and other GM competitors. As previously noted, the Commission has often refused to let the preference of a supporting carrier dictate its decision in application cases such as this.



Its decision here thus establishes one set of rules for ordinary, run-of-the-mill, shippers and the independent motor carriers which desire to serve them, and another, much more favorable, for the very large and important shipper and its favored, rail-owned carrier whom it chose to support.

In addition, the ultimate result of the decision of the majority below, if upheld, will make it impossible to ever obtain court review of Commission decisions in application cases. If the argument accepted as valid by the majority prevails, every shipper which supports a carrier's application before the Commission will stoutly insist—as did General Motors here—that no protestant will get any of its business in any event. Thus, no protestant will be damaged in the legal sense<sup>\*</sup> if the Commission grants the application, no matter how flimsy the proof of need for service. In this manner the majority below, in holding that protestant carriers before the Commission lacked standing to seek court review of its order, has effectively snuffed out a right specifically conferred by Congress.

## ARGUMENT

### **The Commission's Report and Order Violates Congressional Policy And This Court's Decisions Dealing With Rail Operation of Motor Vehicles.**

#### ***Underlying Congressional Policy***

This Court has dealt so often and so recently with the Congressional policy expressed by the proviso of Section

<sup>\*</sup> The logic of the holding is disarmingly simple. Since protestants have no chance of ever transporting G.M. traffic, they can lose no revenue in any event. Having suffered no damages, there is no basis for them to seek review of the Commission's order. The basic fallacy of this logic, aside from its legal frailty, is the failure to recognize that even General Motors can change its mind (and its policy) tomorrow, no matter what it says today.

5(2)(b) of the Interstate Commerce Act that we will not attempt here a detailed discussion thereof.

Congress adopted an anti-monopoly policy with respect to regulated transportation long before it chose to subject interstate carriage by motor vehicle to federal law. The Panama Canal Act of 1912 prohibited any railroad from having "any interest whatsoever . . . in any common carrier by water operated through the Panama Canal or elsewhere" with which the railroad "does or may compete for traffic." 37 Stat. 566, 49 U.S.C. §5(14). Another provision of the same Act, 49 U.S.C. §5(16), allowed rail ownership or control of water carriers, not operated through the Canal, upon a finding by the Commission that such rail ownership or control "will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration." Shortly after passage of the Panama Canal Act, various railroads owning or financially interested in Great Lakes water carriers filed petitions seeking the right to continue the relationship. In *Lake Line Applications Under Panama Canal Act*, 33 I.C.C. 699, 716 (1915) the Interstate Commerce Commission roundly denounced the rail applicants and summarily denied their petitions, saying:

These boat lines under the control of the petitioning railroads have been first a sword and then a shield. When these roads succeeded in gaining control of the boat lines which had been in competition with paralleling rails in which they were interested, and later effected their combination through the Lake Line Association, by which they were able to and did drive all independent boats from the through lake-and-rail transportation, they thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit. Having disposed of real competition via the lakes, these boats are now held as a shield against

possible competition of new independents. Since it appears from the records that the railroads are able to operate their boat lines at a loss where there is now no competition from independent lines, it is manifest that they could and would operate at a further loss in a rate war against independents. The large financial resources of the owning railroads make it impossible for an independent to engage in a rate war with a boat line so financed.

No doubt, Congress had in mind the success of the railroads prior to the Panama Canal Act in reducing water competition to impotency when, in enacting the Transportation Act of 1920, it declared it to "be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." 44 Stat. 499, 49 U.S.C. §142.

When it enacted legislation regulating interstate motor transportation, Congress took pains to prevent rail domination of that form of transportation. By Section 213 of the Motor Carrier Act, 1935 (now Section 5(2)(b) of the Interstate Commerce Act) the Commission was authorized to approve the acquisition of control of a motor carrier by another such carrier upon a finding, after hearing, that "the transaction proposed will be consistent with the public interest." However, should the applicant for Commission approval be "a carrier other than a motor carrier," the Commission was precluded from acting favorably thereon unless the proposed transaction met the following three requirements:

- 1) It would "promote the public interest";
- 2) It would enable the acquiring carrier "to use service by motor vehicle to public advantage in its operations"; and
- 3) It would "not unduly restrain competition."

The purpose of these added findings, prerequisite to Commission approval of rail acquisitions of motor carriers, as explained by Chairman Sadowski of the Subcommittee of the House Committee on Interstate and Foreign Commerce was to assure that "control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder progress in highway transportation." 79 Cong. Rec. 12206, July 31, 1935. In short, as stated by Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, it was expected that "with this limitation, it will be possible for the Commission to allow acquisitions which will make for coordinated or more economical service and at the same time to protect against the monopolization of highway carriage by rail, express, or other interests." 79 Cong. Rec. 5655, April 15, 1935.

By the Transportation Act of 1940, 54 Stat. 898, Congress removed any bar to the acquisition of a motor carrier by a water carrier,<sup>9</sup> but continued in full force the restriction against rail operation of motor vehicles, except under the special standards referred to. Here, we submit, was specific Congressional recognition that while there was no danger that water carriers would be able to gain control of the motor-carrier industry, there was no basis for a similar assumption with respect to the vastly larger and financially-powerful railroad industry.

### ***Interpretation of the Congressional Policy***

The landmark Commission decision in the field here involved is *Pennsylvania Truck Lines, Inc.—Control—Barker*, 1 M.C.C. 101 (1936). That case involved an

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<sup>9</sup> By changing the application of the proviso of §213 of the Motor Carrier Act, 1935, as originally enacted, from "a carrier other than a motor carrier" to "a carrier by railroad" as now specified in §5(2)(b) of the Interstate Commerce Act.

application by a rail subsidiary to purchase the operating rights of an independent motor carrier in order to render a dual service, on the one hand fully coordinated with, and on the other hand completely divorced from, the service of the rail parent. The Commission, division 5, observed, 1 M.C.C. 109, that "It is the obvious intent of the Act that special safeguards shall surround acquisitions of motor carriers by carriers engaged in other forms of transportation, and no doubt railroads were particularly in mind." It went on to say, 1 M.C.C. 111-112: —

• • • we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public.

And, at 1 M.C.C. 113, the Commission held that rail operation of motor vehicles must be "confined to service auxiliary and supplementary to that performed by the . . . [railroad] in its rail operations and in territory parallel and adjacent to its rail lines." In a report and order supplementing its original *Barker* decision, the Commission noted, 5 M.C.C. 9, 11, that ". . . it will be of advantage to the parties in this and later proceedings if we here amplify the meaning of those conditions." It then went on to say, *Id.*, 11-12:



Approved operations are those which are auxiliary or supplementary to train service. Except as herein-after indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier. (Emphasis supplied)

It may be doubted whether Congress, in protecting the motor-carrier industry from undue rail incursion, was, at the same time seeking to prevent the railroads from, as the Commission put it, "invading" each other's territory. Nevertheless, so long as the Commission followed its interpretation of the Congressional policy as set forth in *Barker*, the rail-protective policy also there enunciated could not harm the motor carriers. But here, ironically, the Commission has entirely abandoned Congress' purpose—to protect the motor carriers from rail performance of unrestricted motor service—while at the same time protecting the rail protestants before it by refusing to allow the rail-subsidiary applicant to "invade" their territory. This, despite the fact that both PMT and GM contended before the Commission that rail service to points beyond the Southern Pacific's rail lines, requiring interchange with rail protestants, was inferior to the motor service sought.

While the express limitations upon rail performance of truck transportation, contained in Section 213 of the Motor Carrier Act, 1935, were not repeated in Sections 207 and 209 of the Act, governing the issuance of certificates of public convenience and necessity to common carriers and permits to contract carriers, respectively, the Commission, in *Kansas City Southern Transport Co., Common Carrier Application*, 10 M.C.C. 221, (1938) held that the principles and criteria laid down in the *Barker* case, *supra*, as being applicable to acquisition proceedings under Section 213, were equally applicable to proceedings

under Section 207.<sup>10</sup> In that case the rail affiliate sought under Section 207 motor common carrier rights to operate partly in auxiliary and supplemental service and partly in independent service. The Commission, Division 5, after discussing the *Barker* decision, determined that only coordinated rail-motor operations should be authorized, subject to five conditions intended to insure that service would remain auxiliary and supplemental to the train service of the railroad.<sup>11</sup> The Commission's decision in the *Kansas City Southern* case has been followed consistently prior to this case.

In 1951, this Court, in *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419, at 427, tersely and lucidly summarized the Commission's interpretation of the policy limiting rail operation of motor vehicles to so-called auxiliary and supplemental service:

The Commission understands the Declaration of Policy, §202(a) of the Motor Carrier Act, enacted at

<sup>10</sup> As previously noted, p. 6, *infra*, fn., the Commission's report concedes that "the same principle" applies whether a rail applicant seeks motor common carrier authority under §207 or contract rights under §209.

<sup>11</sup> 1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Kansas City Southern Railway Company or the Arkansas Western Railway, hereinafter called the railways.

2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railways.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

4. All contractual arrangements between applicant and the railways shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service. [10 M.C.C. 240.]

the inception of federal regulation of motor carriers in 1935, 49 Stat. 543, 49 U.S.C.A. §302, as directing it to preserve the inherent advantages of such transportation in the public interest. It finds support for this view in the National Transportation Policy set out in the 1940 amendments to the Interstate Commerce Act, 54 Stat. 899, declaring that the Act should be administered so as to recognize and preserve the inherent advantages of rail, motor and water transportation. It treats §213 of the Motor Carrier Act of 1935 and present §5 of the Interstate Commerce Act as authorizing mergers, consolidations and acquisitions between rail and motor carriers only within the Transportation Policy. Although §207, providing for the issuance of certificates of convenience and necessity, has no clause requiring special justification for railroads to receive motor-carrier operating rights, such as appears in the proviso in former §213 and present §5, the Commission applies the rules of the National Transportation Policy so as to read the proviso into §207 in order to preserve the inherent advantages of motor-carrier service.

And in approving the Commission's imposition of restrictions designed to limit the motor operations of railroads or rail-affiliates to auxiliary and supplemental service, this Court observed, *Id.*, at 443-444:

Such restrictions hamper railroad companies in the use of their physical facilities—stations, terminals, warehouses—their personnel and their capital in the development of their transportation enterprises to encompass all or as much of motor transportation as the roads may desire. *The announced transportation policy of Congress did not permit such development.* (Emphasis supplied)

This Court's most recent pronouncement in the field involved is its opinion in *American Trucking Associations, Inc. v. United States*, 355 U.S. 141 (1957). Although the Court there upheld a grant of unrestricted motor authority to a rail affiliate, the sole basis therefor was the Commission's finding, confirmed by the opinions of

the District Court and this Court, of "exceptional circumstances," i.e., the failure of the independent motor-carrier protestants to render adequate service in the area involved. To quote the Commission's report in the proceeding before it, *Rock Island Motor Transit Co., Common Carrier Application*, 63 M.C.C. 91, 103-104:

Applicant is the only carrier that for a considerable number of years has maintained daily (generally at least 5 days a week) scheduled peddle operations over the entire White Line and Frederickson Line routes regardless of the volume of traffic available for movement in such operations. Opposing motor carriers with appropriate authority have not provided such a service, except with respect to selected small segments of the routes, principally immediately east of Des Moines. These carriers prior to August 30, 1951, delivered less-than-truckload freight to Motor Transit for movement to destinations they are authorized to serve. Some of this freight consisted of low-rated articles which such carriers deemed unprofitable to handle. These carriers in many instances refused to accept less-than-truckload shipments from their motor-carrier connections for movement to a destination embraced in their operating authority. As a result thereof, several of these connecting carriers have had to rely upon Motor Transit to accept and make delivery of such shipments, even in cases where the delivering carrier was designated by the shipper. These experiences have convinced some of the connecting carriers that the unrestricted services of Motor Transit should continue to be available to them so that they may have a carrier that is always willing and able to accept interchange shipments destined to points on the White Line and Frederickson Line routes. One motor carrier that possesses rights on U. S. Highway 6 between Davenport and Des Moines, elects to give all of its less-than-truckload freight to Motor Transit for delivery at such points, because it is not profitable for it to provide this service.

The Commission's report and order in the *Rock Island* case was upheld by a three-judge court for the District

of Columbia, in *American Trucking Associations, Inc. v. United States*, 144 F. Supp. 365. The District Court noted, *Id.*, at 367:

Certainly the terms of the requirement as to auxiliary and supplementary<sup>12</sup> service do not appear in Section 207(a). It is equally certain that the policy of the requirement, being a basic policy in the statute, does apply. The difference between a rigid requirement and an applicable policy is one of flexibility and permits the Commission to be governed in *exceptional circumstances* by the needs of the public convenience and necessity. (Emphasis supplied)

The District Court went on to point out, *Id.*, at 368, that the Commission had found that the "peddle operation" involved, standing alone, "is not a profitable one and that the trend of motor carriers operating in Iowa has been to refrain from rendering this service; . . . ." The Court concluded that "the result of sustaining the motor carriers' position would be a privilege to them of giving the service now rendered by Motor Transit if they so desire and refusing to give it when it is economically not feasible. That would not appear to serve the public interest."

On appeal, the District Court's decision was upheld. This Court also stressed the failure of the independent motor carriers to render adequate service (355 U.S. 153):

There was evidence of a serious need for less-than-truckload peddle service: other carriers frequently failed to handle such traffic, and gave service inferior to that of Motor Transit when they did operate. There was testimony that the weight and key point limitations operated to make even the Motor Transit service less than adequate. It appeared that the peddle traffic alone was not profitable, and that if

<sup>12</sup> At the same page of its opinion, the Court stated: "It is agreed that the requirement [of §5(2)(b)] that the service be used in the operation of the railroad applicant means that the service must be auxiliary or supplementary to the rail service."



confined to it Motor Transit could no longer render the caliber of peddle service it had maintained prior to the imposition of the temporary restrictions. Further, there was evidence that 11 points would be totally without peddle service if the auxiliary and supplemental restrictions were applied. Apart from the effect of restricted operations on peddle service, the record indicates that other carriers sometimes had been reluctant to accept even truckloads in certain low-rated commodities.

This evidence leaves us unwilling to suggest that public convenience and necessity could only be advanced by confining Motor Transit to service of the smaller communities, while leaving the more profitable business to others.

It is thus clear that the sole basis for upholding the grant of unrestricted authority to the rail subsidiary in the *A.T.A.* case was the existence of exceptional circumstances represented by the failure of the independent motor-carrier protestants to render adequate service in the territory involved. The Commission, in its underlying *Rock Island* report indicated that it was not departing from its long-followed policy of limiting rail operation of motor vehicles to auxiliary and supplemental service. After discussing the *Kansas City S. Transport Co.* case, and the five restrictions there imposed,<sup>13</sup> 63 M.C.C. 101-102, the Commission concluded, at 102:

The main purpose for the policy of imposing the five above-quoted restrictions, or modifications thereof, was to prevent the railroads from acquiring motor operations through affiliates and using them in such a manner as to unduly restrain competition of independently operated motor carriers. *This policy was and is sound* and should be relaxed only where the circumstances clearly establish (1) that the grant of authority has not resulted and probably will not result in the undue restraint of competition, and

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<sup>13</sup> Set forth in fn. 11, p. 17, *supra*.

(2) that the public interest requires the proposed operation, *which the authorized independent motor carriers have not furnished, except where it suited their convenience.* (Emphasis supplied)

And the Commission concluded, *Id.*, at 108:

The findings hereinafter made are not to be construed as an abrogation of the policy established in *Kansas City S. Transport Co., Inc., Com. Car. Application, supra*. They represent an exception to that policy justified by the evidence in this proceeding. In other words, such findings do not establish a precedent. Each case of this character must be determined upon the facts and circumstances disclosed by the evidence.

### ***Commission's Decision Violates Settled Construction***

There is a striking contrast between the record before the Commission in the case under review, and that held to justify a grant of unrestricted authority in the *A.T.A.* case. Here, the protestant motor carriers—far from being reluctant to serve—are anxious to do business with the supporting shipper, General Motors Corporation, but that organization, for reasons entirely unrelated to their ability to provide adequate service, shuns them. We have outlined, in Appendix B, the testimony of the appellant motor carriers dealing with this aspect of the case. Their testimony, summarized, indicates that they are well-established carriers; have engaged in the business of transporting motor vehicles for many years; operate equipment suitable for the transportation of GM vehicles; have (or are willing and able to establish) terminals in the immediate vicinity of GM's plants; consider GM traffic very desirable and are able and willing to make the necessary expenditures to add to their fleets and terminal facilities to the extent necessary to handle GM traffic; in the aggregate they can provide substantially all the service needed and are willing to apply for any additional authority required. There can be no doubt of

the willingness and ability of the independent motor carriers to provide the service which General Motors desires. The Commission's report, in dealing with the Sub. 36 application, notes (77 M.C.C. 614; R. 20):

Exceptants are authorized to conduct the proposed operations, have equipment suitable for the transportation of the shipper's vehicles, and are experienced in transporting the considered commodities.

A more detailed outline of the authority of the appellant motor carriers is set forth (R. 24-26) in the Commission's discussion of the Sub. 37 case.<sup>14</sup>

The shipper here—unlike those in the A.T.A. case—has not tried to obtain service from the independent carriers and been rebuffed. Rather, as noted by Commissioner Murphy, dissenting (77 M.C.C. 627; R. 36), it has adamantly refused to use their services. At the hearing before the Commission, the General Motors witnesses made it clear that they had no intention of using the services of existing motor carriers, no matter how adequate.<sup>15</sup>

<sup>14</sup> In addition to the authority held by protestants (appellants here), the Commission's report notes (77 M.C.C. 619; R. 26), that nearly five months before its report and order under review was issued, Insured Transporters received authority to transport automobiles from GM's Oakland plants to points in Arizona, California, Colorado, Montana, Nevada, New Mexico, Utah, and Wyoming. Insured Transporters was an "intervener in opposition" in the Sub. 34 case and an "intervener as its interests might appear" in the Sub. 35, 36 and 37 cases before the Commission.

<sup>15</sup> In our reply to the motions to affirm filed by appellees, we pointed out (pp. 6-7) that the Commission has recently told GM's Cadillac Division to use the services of existing carriers, rather than seek new service. As noted, however, that case (*Boutell Driveaway Co., Inc., Ext.—Cadillacs and Buicks*, \_\_\_ M.C.C. \_\_\_, April 10, 1959) involved a situation in which GM's Cadillac Division did not object to using the service of a carrier "merely because it also serves its competitors." Quare: May the Commission tailor its interpretation of the law and the important Congressional policy involved to suit the varying attitudes of shippers, as it has done in the cited case and the instant proceeding?

The Traffic Director of the Chevrolet Motor Division stated that he was not interested in common carriers (R. 226, 236), wants only single-line contract carrier service (R. 231), is not familiar with the service of existing carriers (R. 235), and has made no investigation, or received information from his subordinates, respecting the service offered by the independent carriers. R. 237. He said much more in a similar vein, but his whole attitude is perhaps best summarized by the following colloquy (R. 246):

Q. So it's your position that existing carriers shouldn't be offered the opportunity to serve you, but that a carrier who doesn't have authority, that you want to have authority, that that carrier should be granted that authority?

A. Yes, that is our position.

The Traffic Manager of the Buick-Oldsmobile-Pontiac Assembly Division of General Motors testified in the same fashion. He stated that he wasn't "sufficiently interested" to make any investigation with respect to the services of existing motor carriers, notwithstanding the fact that GM dealers have complained of the lack of truckaway service for the last two years. R. 290-291. He also stated that he would not use the services of any of the protestants even if the rail subsidiary's application was denied. R. 295.

Q. And you make that observation without knowing what they have, what they offer, their facilities or their territory?

A. That is correct. R. 296.

The Commission, in one of the fundamental decisions in this field, *Rock Island Motor Transit Co.—Purchase—White Line*, 40 M.C.C. 457, 474, stated:

• • • a railroad applicant for authority to operate as a common carrier by motor vehicle, though required to do no more than prove, as any other applicant, that its service is required by public conveni-

ence and necessity, has a special burden, not by reason of any attitude or action on our part, but by reason of the very circumstance that it is a railroad. Where it fails to show special circumstances negating any disadvantage to the public from this fact, a grant of authority to supply motor service other than service auxiliary to and supplemental of train service is not justified.

This Court, in its *Rock Island* opinion, at 340 U.S. 428, quoted the above language as indicating the Commission's purpose to apply the National Transportation Policy so as "to preserve the inherent advantages of motor-carrier service." In its *A.T.A.* opinion, at 355 U.S. 151, this Court noted its earlier reference to the quoted language. Thus it appears that although this Court has indicated that the Commission's expression properly interprets the law, the Commission's majority has consigned it to limbo. Surely the mere application by the rail subsidiary, together with the backing of the supporting shipper, cannot be said to meet the "special burden" imposed on railroads or their affiliates seeking unrestricted motor-carrier rights. That it has not met its special burden is clearly indicated by the following from the report of the Commission (77 M.C.C. 620; R. 27):

Shipper's argument that motor service is needed to nonrail points to meet the competition of other automobile producers can be accorded little probative weight in face of its continued refusal to make use of the available services of the protesting motor carriers. The fact that both General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby to block the use by other carriers of normal egress routes, has no bearing upon the adequacy or inadequacy of existing motor transportation facilities.

We have shown that the Commission's grant of authority, unlike that involved in the *A.T.A.* case, is not justified by any failure on the part of independent motor



carriers. In the final analysis, the award seems to have been made merely because the supporting shipper, GM's Chevrolet Division, insisted that the rail-subsidiary applicant be so favored. But if one principle is firmly rooted in transportation law, it is, as indicated by Commissioner Murphy, dissenting (77 M.C.C. 627; R. 36), that the preference of a shipper for the services of a particular carrier does not justify a grant of authority. The Commission has so held on numerous occasions. See, for example, *Nygård Express, Inc., Contract Carrier Application*, 69 M.C.C. 340, 342 (1957), and *Gray Contract Carrier Application*, 69 M.C.C. 695, 704 (1957). The Commission has rendered similar decisions subsequent to its report and order here involved. In No. MC-113855 (Sub-No. 32); *International Transport, Inc., Extension—Winona, Minn.* (decided Nov. 17, 1959; mimeo., not yet printed), the Commission, division 1, said (Sheet 8):

It is apparent, therefore, that the supporting shipper has available to it, in addition to the coverage presently afforded by applicant, an abundance of common-carrier service<sup>16</sup> suitable for the transportation of its products. The commodities involved presently move by rail and motor carrier. Some of these products are transported by applicant and certain of the opposing carriers either direct or through interlining. Moreover, the shipper has made no attempt to utilize much of the service available to it, and its support of the application appears to stem primarily from a desire to use the services of this particular applicant and not from any real substantial need for additional motor-carrier service. It is well established that a shipper's preference for a particular carrier does not provide a proper basis for the granting of authority for a new competitive serv-

<sup>16</sup> The carrier appellants here include both common and contract carriers. Convoy, Robertson, Western and Kenosha are common carriers, while Hadley and B & H are contract carriers. Insured Transporters, referred to in fn. 14, p. 23, *supra*, is a common carrier. 77 M.C.C. 617-619; R. 24-26.

ice, particularly where, as here, there are a number of carriers available that offer a service similar to that proposed, including the drop-off of shipments en route. (Emphasis supplied)

And in No. MC-36144 (Sub-No. 5) *Law & Ingram Transp. Co., Inc., Extension—Pig Iron* (decided December 18, 1959; mimeo, not yet printed), the Commission, reversing on reconsideration an earlier grant of authority to applicant, stated (Sh. 4):

In our opinion, the prior report failed to give sufficient weight to motor-carrier protestants' expressed willingness to perform the proposed service. It is well established that an existing carrier generally should have the right to transport all the traffic it can handle adequately and efficiently in the territory it is authorized to serve, without the added competition of a new operation. The evidence in support of the application establishes an understandable preference of the supporting shipper to have applicants' present service extended to new points, but it does not establish that a public need exists therefor. . . .

It thus becomes clear that the Commission not only did not require the rail-subsidary applicant to meet the "special burden" which it asserted in the *White Line* case all such carriers must shoulder—it did not even require it to meet the burden contemporaneously imposed upon independent motor carriers! We turn now to the reasons claimed to justify such treatment.

After assuring the rail protestants that they would be protected by limiting the authority granted to their rail-competitor subsidiary to points on its parent's lines, the Commission offers the following comfort to the motor protestants, 77 M.C.C. 620; R. 27:

On the other hand, insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by the Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier.

In view of the fundamental Congressional policy involved, the Commission's reasoning is both logically and legally fallacious. If PMT is to be turned loose to perform unrestricted truck service merely because its rail parent already transports the same traffic in rail service, then every railroad in the country is free to pick its choicest traffic and largest shippers and enter the field of motor carriage with respect thereto. The Pennsylvania Railroad, we have no doubt, has transported iron and steel products from United States Steel plants for decades. If the Commission's reasoning is valid, the Pennsylvania could tomorrow ask for and receive motor carrier authority to handle iron and steel products for U.S. Steel between points throughout its vast system. Multiply that example by the number of railroads in the country and some idea can be reached of the extent of motor-carrier authority which railroads could obtain merely for the asking. What then becomes of the Congressional policy against allowing unrestricted truck operations by railroads except in exceptional circumstances?

The independent motor carrier industry has genuine reason to fear a great spread of the practice of authorizing unrestricted motor service by railroads or their affiliates, if the instant grant to PMT is upheld. To illustrate: numerous applications have been recently filed by rail motor subsidiaries and independent motor carriers to transport cement from producing plants in the Lehigh Valley, which, until now, have used rail service exclusively. Docket No. MC-27817 (Sub-No. 35); *H. C. Gabler, Inc., Extension—Cement From Maryland and Pennsylvania Counties*. In their brief filed October 1, 1959, the Pennsylvania Railroad and its wholly-owned subsidiary, Pennsylvania Truck Lines (PTL), one of the applicants, after discussing the "policy of restricting the motor carrier operations of the railroads," go on to say (pp. 23-24):

Here the public interest requires the relaxation of the policy and issuance of the authority sought [by PTL]. PTL is not going to provide competition for existing motor carrier services for none of the existing motor carriers are presently handling the cement traffic. Rather PTL is seeking for the Railroad opportunity to meet the competition of motor carriers entering the field for the express purpose of diverting the Railroad's traffic. The Commission in a situation strikingly similar, has issued contract carrier permits to a subsidiary of the Southern Pacific Railroad so that it could remain competitive for automobile traffic it had been handling in box cars. *Pacific Motor Trucking Co.—Ext.—Oregon*, 77 M.C.C. 605 (1958) aff. *American Trucking Associations v. United States*, 170 F. Supp. 38 (D. of C. 1959). If a railroad subsidiary is entitled to an unrestricted permit to enable the railroad parent to continue to compete for automobile traffic, PTL's applications should likewise be granted so that the Pennsylvania Railroad will remain competitive for the very important cement traffic.

The above-quoted portion of the railroad's brief in the cited case indicates that if the Commission may validly grant unrestricted rights to PMT under the circumstances of this case, it can with equal validity grant similar authority to other railroads throughout the country, despite the Congressional policy against such grants except in exceptional circumstances. Beyond that, it is interesting, at least, to note that its sister rail-motor combine refers to the grant of authority to the rail subsidiary here as an "unrestricted permit." Coincidentally, despite the fact that there has been no intervening change of Congressional intent, we find the same railroad subsidiary which was instrumental in establishing, through its application there involved, the *Barker* doctrine, now urging the Commission to abandon it on the strength of its PMT report and order.

The Commission's report indicates that had PMT sought common, rather than contract carrier authority,

any grant issued would have included the usual restrictions designed to limit operations to auxiliary and supplemental service.<sup>17</sup> But, the Commission says, these restrictions cannot be here imposed, because that would result in authorizing common carriage, rather than the contract rights applied for. 77 M.C.C. 623; R. 31. In short, all that rail applicants need do, in order to avoid the application of the Congressional policy otherwise applicable where, as here, they cannot show "exceptional circumstances" justifying unrestricted rights, is seek contract rather than common carrier authority. Surely such an important Congressional policy may not be so easily frustrated!

The Commission's report, 77 M.C.C. 623; R. 31, partially justifies its failure to impose the usual rail-motor restrictions on the operations authorized, "for to do so would be to command the holder to render a common-carrier service." In the same breath, 77 M.C.C. 622-623; R. 30, it refers to two of its own decisions, the *Hagerty* and *Siebert* cases, where it did just that! In numerous other cases, the Commission has issued a different type of authority than that applied for. For example, in *Pregler Extension of Operations*, 23 M.C.C. 691; *Neukirk Contract Carrier Application*, 43 M.C.C. 85; *Gay Contract Carrier Application*, 73 M.C.C. 660; *Fuller Contract Carrier Application*, 73 M.C.C. 716; *Coleine and Cortazzo Contract Carrier Application*, 76 M.C.C. 70; and *Smetanick Extension—Clay Products*, 77 M.C.C. 523, the Commission authorized the performance of common carrier service although contract carrier rights were applied for. For the reverse situation, see *H. & M. Trucking Co., Inc., Common Carrier Application*, 72 M.C.C. 389, rev'd. on

<sup>17</sup> The report does not so state specifically, but we believe this a fair inference from the tenor of the whole report, particularly the discussion under the head "General Discussion—Restrictions," 77 M.C.C. 621-623 (R. 28-31), plus the finding, *Id.*, 623 (R. 31), of an "absence of any showing of unusual conditions."



other grounds, 74 M.C.C. 107; and *Michigan Pickle Co. Common Carrier Application—Passengers*, 77 M.C.C. 544.

In the proceedings under review, as alternatives to the result reached, the Commission had two choices: (1) outright denial of the applications, or (2) a grant of common carrier authority.<sup>18</sup> This latter alternative, of course, would clearly have enabled the Commission to give life to the Congressional policy by attaching conditions designed to limit the service to auxiliary and supplemental operations, tying in with the rail parent's common carrier service from the GM plants involved. Instead, the Commission chose to issue unrestricted authority, despite its finding of an absence of special circumstances which would justify such a grant.<sup>19</sup> And, as previously noted, in bowing to the supporting shipper's stubborn demand for PMT's service, it pointedly ignored its many decisions holding that such preference does not justify a grant of authority.

Finally on this phase of the case, we anticipate that appellees will argue, as they did before the District Court, that the authority granted to the rail subsidiary was not "unrestricted," as we contend. The short answer to this

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<sup>18</sup> The Commission has recognized that there is little distinction between motor common and contract carriage of automobiles. In *Bush Construction Co., Inc. v. Platten*, 48 M.C.C. 155, 162, the Commission, division 2, stated: "And the operations of many common carriers are limited to particular shippers or shippers of a particular class, not by reason of the desires or whims of the carriers, but because the nature of the commodity or commodities transported necessarily narrows the scope of the public holding out. For example, common carriers of automobiles in initial movements of necessity serve an extremely limited class of shippers." (Emphasis supplied)

<sup>19</sup> Ironically, and paradoxically, the Commission's rationale for issuing the unrestricted authority involved, specifically points out that its previous grants of such authority to railroads or their affiliates were "warranted by special circumstances." 77 M.C.C. 622, R. 30.

is that both the majority and dissenting opinions clearly indicate that all members of the Commission understood that the authority issued was, in fact, unrestricted. To be sure, the majority report (77 M.C.C. 623; R. 31) imposes a "territorial limitation" on the service to points on the rail parent's line,<sup>20</sup> and also notes that "a restriction is warranted" reserving the right to impose, in the future, any restrictions necessary or desirable. At the outset of his dissent (77 M.C.C. 627; R. 36) Commissioner Murphy properly characterizes the grant of authority to PMT as "unrestricted."

It should be obvious that a mere reservation of power to impose in the future, if ever, restrictions on the authority here involved, can in no proper sense be termed a "restriction," *as of now*. In any event, the utter futility of this reservation is demonstrated by the Commission's report itself. If, as it states (77 M.C.C. 623; R. 31), the "restrictions usually employed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common carrier service," how could such restrictions be imposed in the future any more readily or properly than at present?

This leaves only the question of whether the "territorial limitation" involved constitutes a "restriction" as that term is ordinarily comprehended. In their motions to dismiss appellees contend that it does. PMT and General Motors say, at pp. 5-6 of their motion, that the "basic flaw" in our argument is our description of the rights as "unrestricted." The Commission, at page 9 of its motion, contends that "the anti-monopoly objectives of Section 5(2)(b) are satisfied by restricting the service to

<sup>20</sup> The only effect of which, as noted by Commissioner Arpaia, dissenting (77 M.C.C. 627; R. 36), is to protect "rail protestants against invasion and competition" but which fails "to extend protection to the motor carrier protestants."

points which are already served by the railroad . . .” These contentions, though phrased differently, amount to the same thing: that the Commission, by geographically or territorially limiting the authority granted,<sup>21</sup> has conformed to the Congressional policy applicable in cases of this kind. In our Jurisdictional Statement (pp. 15-16) we pointed out the absurdity of this contention. Every application for motor-carrier authority before the Commission involves some territorial limitation and such a “restriction” cannot be construed as limiting the operations here involved to service which is auxiliary and supplemental to that of PMT’s rail parent.

More than a decade ago, appellees’ contention was rejected by the Commission, in the *White Line* case, *supra*, 40 M.C.C. 457. There (at p. 470) the Commission noted that “there also appears to have developed a tendency in rail-motor acquisition proceedings to treat the *Barker* case restrictions as geographical or territorial only in their intent rather than as substantive limitations upon the character of the service which might be rendered by a railroad or its affiliate under any acquired right.” (Emphasis by the Commission) In a somewhat lengthy discussion (pp. 471-472), the Commission completely disposed of the contention that territorial limitation of a rail affiliate’s motor authority satisfies the Congressional policy underlying Section 5(2)(b). For brevity, we quote the opening sentence and concluding paragraph of the discussion:

Despite whatever color of support may be found for the thought that the “approved” operations of the vendee in the *Barker* case, were limited only terri-

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<sup>21</sup> The Southern Pacific’s rail system extends for 8,000 miles in the area involved. *Transport Statistics in the U.S.*, 1957 (I.C.C.), Part 1, p. 403. Appellees PMT and General Motors characterize the vast increase over the insignificant interstate contract carrier authority previously authorized as a “relatively minor extension.” (Motion to Affirm, p. 20).

torially and not as respects the character of the service which might be rendered, we are convinced there was no such intent and that the reports should not be so construed or applied.

In these circumstances and contrasting the language used and the supporting discussion with the much simpler language which would have been adequate if it had been intended to restrict future operations of the vendee only territorially, *it is clear that any tendency to treat the Barker case as an approval of future rail-motor operations which should be unrestricted except territorially, ignores the clear declaration that certain types of operations are disapproved wherever conducted, and must spring from a misinterpretation of the intent of the reports therein.* (Emphasis supplied)

Even if the Commission had not so clearly rejected the argument that territorial limitation to points on the rail line does not satisfy the Congressional policy involved, the exercise of common logic should do so. The railroads of the country, in the aggregate, serve almost every point of any commercial importance at all. Considering the underlying Congressional policy, it would be a strange result, indeed, if railroads were to be allowed, willy-nilly, to parallel their lines with motor service, operating independently of the rail service as PMT has been allowed to do here. Yet that is the inevitable result once the argument is accepted that a territorial limitation to points on the rail line satisfies the requirement that railroad motor operations, except in exceptional circumstances not present here, are to be limited to so-called auxiliary and supplemental service.

Included in the anti-monopoly objectives of Section 5(2)(b) is the prohibition against entry of an order by the Commission unless it finds that service by motor vehicle will be used "in its [the railroad's] operations." The ability to make such a finding is indispensable to the issuance of bona fide restricted authority. Yet the Com-

mission majority (77 M.C.C. 624-625; R. 33) could make no such finding here, for the obvious reason that the grant of authority does not conform to the requirements of §5(2)(b).

The most persuasive argument against the railroads entering into unrestricted truck operation is the necessity for maintenance of competition among different modes of transportation as the best assurance that the public interest will be protected in respect to rates and service. Here, the result of the decision is to completely stifle any possibility of competition by giving the Southern Pacific a monopolistic control over all rates and service from General Motors Plants on the West Coast and putting the railroad in a position to dominate and control rates on automobiles from other manufacturing plants which it serves on the West Coast. Theoretically, the shipper is being given an alternative of an all-rail service or an all-truck service, but regardless of which choice he makes there is really no competition. One is the left arm and the other is the right arm of the same Goliath to whom the Commission has awarded a complete and permanent victory resulting in immediate annihilation of all competition by independent motor carriers.

It may be argued that if GM is going to be served only by a rail monopoly, why should this be a matter of public concern, since it is a large and powerful shipper able to protect itself. But what about the GM dealers and retail purchasers of GM autos. The transportation cost is paid initially by GM but is passed on to the dealer and then to the retail buyer in the form of additional charges for "transportation and handling". The issue here is not entirely the protection of the independent trucking industry for the sake of that industry itself, but because the competition afforded by that industry is the only protection available to the small businessmen who sell GM cars and the individuals who buy them.



Congress certainly has made it clear that the public is entitled to this protection and that it is guaranteed such protection by the statutory prohibition against rail transportation monopolies. If such protection is to be completely removed, then Congress must do it and not the Commission. Regardless of the shipper's willingness to be allied with a railroad monopoly in the form of both rail and truck transportation from all of its West Coast manufacturing plants, the consequences of this monopoly are eventually borne by the buying public rather than the shipper. Congress indicated a clear intention to protect the public against these consequences and neither the selfish interests of the railroad applicant nor the supporting shipper should transcend the public interest embodied in the underlying Congressional policy involved.

**The Court Below Erred in Holding That The Grant Of Unrestricted Authority Was Justified by "Special Circumstances."**

As noted, the Commission's report, 77 M.C.C. 623 (R. 31), acknowledges the absence of any "unusual conditions" which would justify an exception to application of the Congressional policy usually applied in cases of this kind. Without in any manner indicating wherein the Commission erred, the court below made a contrary finding, i.e., that "substantial evidence of special circumstances" justified the authority granted. 170 F.Supp. 38, 45; R. 81. This finding by the court below was apparent recognition that under the governing decisions of this Court, the Commission's award of unrestricted rights could not stand absent a finding that "special circumstances" justified it.

One of the most firmly established rules in court review of agency action is that findings of an administrative body may not be overturned unless clearly erroneous. But, as noted, the court below did not even suggest that

the Commission erred in finding no "unusual conditions," much less specify wherein it had erred.

In substituting its judgment for that of the Commission, the District Court exceeded the limits of judicial review of agency action. In such review the court is limited to determining whether errors of law have been committed. *Scripps-Howard Radio v. Federal Communications Comm.*, 316 U.S. 4, 10; *Rochester Telephone Corp. v. United States*, 307 U.S. 125, 139-40; *Federal Communications Comm. v. Pottsville Broadcasting Co.*, 309 U.S. 134, 144, 145. Weighing the evidence and modifying the Commission's finding that no such "special circumstances" ("unusual conditions") were shown, exceeded the court's reviewing role.

The appellants thus are faced with an affirmation of the Commission's grant of unrestricted authority, but are given no clear-cut statement whether the grant was proper because the "special circumstances" test is not applicable, or because the test was applicable and was met, as the court indicates.

Although a court's power to overturn an agency's findings of fact is ordinarily questioned only in cases where the effect of the court's action is to reverse agency decisions, "[f]or purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency." *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 88. An administrative order "cannot be upheld unless the grounds upon which the agency acted in exercising its power were those upon which its action can be sustained." *Id.*, at 95. Courts are precluded from inferring findings which would support the agency conclusion, *Id.*, at 88; *Boudin v. Dulles*, 235 F.2d 532, 534-35; *Burrell v. Martin*, 232 F.2d 33; a fortiori they cannot overturn agency findings of fact not

found unsupported by substantial evidence so as to achieve the same results as the agency.

One of the dangers of judicial reevaluation of evidence considered by the agency is that different inferences will be made by agency and court from the same undisputed facts. This is exemplified by the different evaluations of the fact that the rail subsidiary had been permitted to establish receiving facilities at the General Motors plants. As previously noted, p. 25, *supra*, the Commission found that this factor "has no bearing upon the adequacy or inadequacy of existing motor transportation facilities." Considering the same evidence, the court stated the Commission had found

that use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant, which are geared to use of PMT's services from its nearby yard. 170 F.Supp. 38, 45; R. 80.

The "finding" attributed to the Commission by the court below is apparently based on language in the Commission's report, at 77 M.C.C. 614; R. 20. We submit that this language was not intended by the Commission to be a "finding,"<sup>22</sup> but merely a recital of one of the contentions of the rail-subsidary applicant. But the court below, erroneously characterizing it as a finding, disagreed with the Commission and held it to be part of the substantial evidence of "special circumstances" justifying the unrestricted grant.

<sup>22</sup> The Commission's language referred to appears in a section of its report entitled "Present and Proposed Operations of Applicant," commencing at 77 M.C.C. 612 (R. 18). Even if the court below was correct in holding this to be a "finding" of the Commission, it is obviously subordinate to its later conclusion, in the same section of its report, that the close proximity of PMT's receiving yards and GM's assembly plants "has no bearing upon the adequacy or inadequacy of existing motor transportation facilities." 77 M.C.C. 620, R. 27.

The "substantial evidence" test set out in section 10 of the Administrative Procedure Act, 49 U.S.C. §1009, is not, as the District Court used it, whether there is substantial evidence to support a conclusion opposite to that determined by the agency, but whether there is substantial evidence to support the agency finding. It may be possible that a case would arise in which substantial evidence of one finding or conclusion would preclude the possibility of there also being substantial evidence of the contrary conclusion or finding. But the court below in no way intimated that the instant proceeding is such a case or that there was an absence of substantial evidence in the record to support the Commission's finding of no "unusual conditions."

The appellants are at least entitled to a clear statement by the court below indicating wherein the Commission erred in finding no "unusual conditions." If the "special circumstances" test applies to unrestricted grants of motor contract authority to railroads or rail affiliates,<sup>23</sup> substantial justice can only be done by reaffirming the limitation on the court's powers on judicial review and voiding this grant of unrestricted authority based on a record held by the Commission to disclose no "unusual conditions."

Aside from the question of limitation upon court review of agency action, we respectfully submit that the court below erred, in any event, in finding "special circumstances" justifying the grant of unrestricted authority. The Court's opinion states, 170 F.Supp. 38, R. 80; that:

- a) PMT had given General Motors good service from other points for many years;
- b) that operations must be closely coordinated;

<sup>23</sup> As noted, p. 6, *supra*, the Commission's report concedes that "the same principle" applies to §209 (contract carrier) as to §207 (common carrier) proceedings.

- c) that use of any other carrier would cause confusion and disarrange operations at the plant;
- d) that GM supported the application in order to obtain<sup>24</sup> better service to meet the competition of other automobile manufacturers, i.e., Ford and Chrysler.

Admitting, *arguendo*, that these findings are correct, it is submitted that they do not justify an exception to the usual rule of limiting rail operation of motor vehicles to auxiliary and supplemental service. If General Motors is in any "predicament," it is one which is brought about by its intentional "backing" of a motor carrier which—as distinguished from a non-rail subsidiary—suffers an inherent disadvantage because of the Congressional policy here involved. It must be assumed that GM was well aware of this when it voluntarily entered into the arrangements which led to close coordination between its operations and those of the rail subsidiary. Since any problems which might accrue to GM by reversal of the Commission's decision would be—unlike the situation in the *A.T.A.* case, *supra*, not traceable to any fault on the part of the independent motor-carrier protestants, but entirely the result of its voluntary exercise of its judgment—why should the Congressional policy usually invoked in cases of this kind not be applied here? To find, as the District Court did, that GM's "problems" arising from its exercise of judgment constitute "special circumstances" simply means, in the final analysis, that any shipper who desires to may frustrate the important Congressional policy here involved by merely choosing to align itself with a railroad's motor subsidiary and so closely coordinating their transportation facilities and

<sup>24</sup> As to this, the Commission said, 77 M.C.C. 620, R. 27: "The shipper's argument that motor service is needed to nonrail points to meet the competition of other automobile producers can be accorded little probative weight in face of its continued refusal to make use of the available services of the protesting motor carriers."



arrangements as to make any disruption thereof inconvenient. There are no equities here which warrant special treatment for General Motors.

**The Recent Amendment of Section 209(b) of the Interstate Commerce Act Does Not Support the Commission's Award of Authority to the Rail Subsidiary.**

The District Court noted our contention (170 F. Supp. 44; R. 78) that the recent amendment to Section 209(b)<sup>25</sup> has no bearing on the issues here,<sup>26</sup> and went on to hold (*Id.* p. 44; R. 79) that regardless of the original reason for instituting the legislation which culminated in the 1957 amendments, the Commission "did consider those criteria [of §209(b) as amended]" in its report and order here involved. We respectfully submit that the District Court erred in holding that the amendment to §209(b) has any bearing on the issues here.

The primary purpose of the 1957 amendments was to overcome the effect of this Court's decision in *United States v. Contract Steel Carriers, Inc.*, 350 U.S. 409, wherein it was held, at 412, that a contract carrier "is free to aggressively search for new business within the limits of his license. In testifying at the hearings on the proposed amendment to the law, Commissioner Clarke, on behalf of the Interstate Commerce Commission, noted that,

Freedom to solicit customers without restriction as to specialized service would tend to obliterate the

<sup>25</sup> Public Law 85-163, 85th Cong., approved August 22, 1957; 71 Stat. 411.

<sup>26</sup> It was the intervening defendant, PMT, not these appellants, who raised this issue. In its answer to our complaint, PMT contended (p. 4) that the Commission had properly applied "the applicable provisions of section 209(b) of the Interstate Commerce Act, as amended August 22, 1957 \* \* \*". In its reply brief filed in the District Court, PMT's first argument bears the heading "The Amendment to Section 209(b) on August 22, 1957, Has a Direct Bearing on the Present Case."

distinction which Congress intended to make between common and contract carriers. The amendments proposed in the bill [S. 1384] would enable the Commission to give greater effect to congressional purpose, first by amending the definition of contract carrier by motor vehicle to state clearly that the transportation services furnished by such carriers are to be of a special and individual nature for one or a limited number of persons and which are not provided by common carriers. Hearings on S. 1384 and Related Bills, Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 85th Congress, 1st Sess., April 17, May 7, 8, and 9, 1957, p. 23.

Also testifying during the hearings was David I. Mackie, Chairman of the Eastern Railroad Presidents Conference, who appeared on behalf of the Association of American Railroads, in "support of the general objectives of S. 1384." *Id.*, p. 263. Mr. Mackie stated that "the bill would be tremendously helpful in controlling the enormous growth of contract carriage of the type exemplified in the Contract Steel Carrier case." The witness also expressed the thought that "the general public, as well as the general transportation industry, would be benefited by the adoption" of the legislation "because the general public is necessarily dependent for its transportation needs mainly upon common carriers, and the health and welfare of the common carriers is accordingly basic to the public welfare, and the unregulated, unbridled growth of highly competitive contract carriage of the nature that this bill would prevent is bad for common carriage, and therefore it is necessarily bad for the public." *Id.*, p. 267.

The report of the Senate Committee which accompanied S. 1384 stated:<sup>27</sup>

The present law has proved inadequate to maintain proper distinctions between common and contract

<sup>27</sup> S. Rept. No. 703, 85th Cong., 1st Sess., p. 7.

carriage. It has made difficult in this area of regulation, of obtaining the objectives of the national transportation policy. The decision of the Supreme Court in *United States v. Contract Steel Carriers* points out clearly a need for a change in the statute. Without it, proper and sound administration and regulation in the public interest cannot be achieved.

The report of the House Committee on Interstate and Foreign Commerce (H. Rept. No. 970, 85th Cong., 1st Sess.) on the companion bill (H. R. 8825) is to the same effect.

The District Court's holding that the Commission considered the criteria of §209(b) as amended, fails to take into consideration the fact that, in amending the law, Congress gave not the slightest intimation that it in any way intended to alter its traditional policy against rail performance of unrestricted truck service. The rule against repeal by implication is too well known to require citation.

As we pointed out in our Jurisdictional Statement (p. 16), Commission compliance with the provisions of §209(b) is enough where the applicant is other than a rail subsidiary, but the decision of the court below fails to give appropriate consideration to PMT's status. If all that a railroad or its affiliate need do, in order to acquire rights to perform unrestricted truck service, is introduce the same proof required of an independent motor carrier, what has become of its "special burden" alluded to by the Commission in the *White Line* case, *supra*? Neither the Commission's report nor the District Court's affirmance thereof supplies the answer to that question.

It is thus clear that the amendment to §209(b) has no bearing on the issues here and in no way supports the Commission's award of unrestricted right to the rail affiliate, in view of the latter's failure to meet its special burden of showing exceptional circumstances justifying a grant of such authority.

**The Multiple Motor and Rail Operations Permitted by the Commission's Report and Order Violate Congressional Policy Against Dual Operations.**

The governing statute (Section 210 of the Interstate Commerce Act, 49 U.S.C. §310; Appendix A, p. 6a, *infra*) prohibits, except for "good cause shown," the holding by the same person, or parties under common control, of a certificate as a motor common carrier and a permit as a motor contract carrier authorizing operation by motor vehicle "over the same route or within the same territory." The Commission also recognized in its prior decision in the Sub. 34 case that the principles underlying this provision of the Interstate Commerce Act are equally applicable to a dual relationship between a contract carrier by motor vehicle and its common carrier rail parent. See p. 48, *infra*.

The Commission's report allows the holding by PMT of both common and contract carrier rights, between points in the same territory, and the holding by Southern Pacific Transport Company (still another motor subsidiary of the same rail parent, operating in another territory) of the certificates heretofore issued to it. 77 M.C.C. 625; R. 33. It also condones by its grants of extended contract carrier authority to PMT, the duality of operations resulting from Southern Pacific's service in the same territory as a rail carrier. Thus, the Commission approves the operations by PMT as a motor contract and common carrier, and Southern Pacific as a rail carrier, upon behalf of the same shipper and within the same territory. Moreover, the opportunity would exist for PMT as a motor contract carrier and Southern Pacific as a rail common carrier to transport the same commodities from the same origins to the same destinations. The authority to conduct the multiple rail and motor operations resulting from the Commission's report and order is completely unsupported by the record, and fails to

conform to the Commission's practice in cases involving independent motor carriers.

In *Ziffrin, Inc., Contract Carrier Application*, 28 M.C.C. 683, the Commission, Division 5, in denying an independent motor carrier authority to conduct dual operations, stated (695-696):

The common-carrier company is authorized to transport general commodities, with certain exceptions, from or to all of the points which applicant is found to have served on July 1, 1935, and since, except South Bend, Ind., and Aurora, Ill. General commodities include those which we have concluded applicant has been transporting. In view of these facts, the grant of a permit to applicant herein would place in the hands of the same person, as "person" is defined in the Act, authority to conduct operations both as a common and as a contract carrier in respect of the same commodities and between the same points. In dealing with individual carriers, we have uniformly imposed conditions which would prevent any such carrier from conducting operations as both a common and contract carrier, where the operations would be competitive as to commodities and territory. Under applicant's theory, we would be prevented from imposing restrictions herein to prevent competitive common-carrier and contract-carrier operations solely because we are dealing with separate corporations.

Later in its report (28 M.C.C. 698), the Division said:

The discrimination which the section is intended to obviate is always present when the same persons are able to offer both kinds of service in respect of the same commodities and between the same points.

A petition for reconsideration was denied by the entire Commission, 33 M.C.C. 155, and when the case was appealed, the Commission's denial of dual authority was ultimately upheld by this Court, *Ziffrin, Inc. v. United States*, 318 U. S. 73.



Only recently, the Commission has expressed the same philosophy in denying contract carrier authority to an independent motor carrier already holding common carrier rights. In No. MC-108449 (Sub-No. 59); *Indianhead Truck Line, Inc., Extension—Service Station Supplies*, \_\_\_\_ M.C.C. \_\_\_\_, mimeo., not yet printed (Oct. 13, 1959), the Commission, division 1, stated (Sheet 10):

Having found that the proposed operation is contract carriage, there next remains for consideration the issue of dual operations arising under section 210 of the act. That section provides in general that no person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier authorizing operations in the transportation of property within the same territory unless for good cause shown the Commission shall find such dual operations to be consistent with the public interest and the national transportation policy. Applicant is authorized as a bulk petroleum transporter, and the supporting shipper is one of its major customers. A grant of contract carrier authority would enable it to serve the same shipper in a dual capacity and open the door to discriminatory practices against which the prohibition of section 210 of the act is directed. Accordingly, we are convinced that dual operations cannot be approved in the circumstances here presented, and that the application must be denied.

As noted, the underlying basis for Section 210 was the recognition by Congress of the opportunities for discriminatory practices, including rebates,<sup>28</sup> that can be effected through service performed for the same shipper as a contract and common carrier. The mere opportunity to

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<sup>28</sup> That this concern cannot be attributed merely to fears engendered by the transportation practices of an earlier day, is plain. See, for example, *United States v. General Motors Corp.*, 226 F. 2d 745 (1955), in which the opinion of the appellate court (CCA 3) discloses that GM received a concession of more than \$170,000 for property in the Philadelphia area purchased on its behalf, and conveyed to it, by the B. & O. Railroad.

engage in such practices has been found sufficient in numerous cases to warrant disapproval of dual operations. Stated differently, the Commission has said that the door must be closed to even the possibility of a motor carrier serving the same shipper as a contract and common carrier. *Smith and Melton—Extension—Missouri*, 51 M.C.C. 627; *P. J. Hamill Transfer Co., Extension—St. Louis County*, 51 M.C.C. 641; *Park-Davis Lines, Inc., Contract Carrier Application*, 51 M.C.C. 787.

In *Miller Transport Co., Inc.—Purchase—Storch Trucking Co.*, 57 M.C.C. 208, 214-215, the Commission stated:

The fact that vendee, as a contract carrier, might serve the shipper on commodities differing from those transported by it as a common carrier would not obviate the possibility of engaging in discriminatory practices. . . . We do not imply that vendee herein would necessarily indulge in discriminatory practices, but the opportunity to do so would be present.

It is only in those instances where the services performed as a common and contract carrier are not competitive or where the commodities to be transported by the common and contract carrier are wholly different, that the Commission has approved dual operations. *Stang Contract Carrier Application*, 73 M.C.C. 513; *Kauffman & Minter, Inc., Extension—Tullytown, Pa.*, 73 M.C.C. 691; *Refrigerated Transport Co., Inc., Extension—Frozen Foods*, 72 M.C.C. 459; *Refrigerated Transport Co., Inc., Extension—Loring, Kans.*, 72 M.C.C. 623; *Schaffer Trucking, Inc., Extension—Dairy Products*, 69 M.C.C. 249; *Superior Trucking Co., Inc., Extension—Texas*, 69 M.C.C. 515; *Schaffer Trucking, Inc., Extension—Lykens, Pa.*, 68 M.C.C. 4.

Again we raise the question: If a railroad or its affiliate bears a special burden, as the Commission holds, in justifying a grant of unrestricted rights, how can the Commission deny dual authority to independent motor car-

riers, as was done in the numerous cases cited, and at the same time here allow the railroad and its motor subsidiary to perform common and contract service for the same shipper between the same points and with respect to identical commodities? The situation here is even more fraught with possibility for discrimination than is the usual case involving dual operations. In addition to the duality of operations already referred to, PMT will have the right to handle, as a common carrier, any other freight, except automobiles, moving in or out of the plants involved.

In authorizing the widespread motor contract carrier operations involved, the Commission sought to avoid the stricture of §210 by requiring the rail subsidiary to request "in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificate authorizing motor common carrier operations (77 M.C.C. 564; R. 32). This overlooks the Commission's prior report in the Sub. 34 case where it noted (71 M.C.C. 563-564; R. 58):

Further, there is also a question as to whether we should grant such a permit in view of the extensive common carrier rail service now provided in the territory by applicant's parent corporation, the Southern Pacific Company. True, the provisions of section 210 of the act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle, but even without the statutory requirements, we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed.

The Commission's report here under review relies for its approval of dual operations upon its prior decision in the Sub. 34 case,<sup>29</sup> which involved only transportation from Oakland to points in Oregon on the lines of the parent railroad. The report states (77 M.C.C. 623; R. 31): "The prior report in the Sub. 34 proceeding fully discusses the dual operation question and needs little enlargement o[r] repetition."

When the "full discussion" of the dual operation question in the prior Sub. 34 case is examined, a glaring inconsistency is disclosed. Far from having submitted proof there justifying dual operations, PMT had merely relied on the fact that the Commission had previously allowed it to perform such service. Referring to this, the Commission (71 M.C.C. 565; R. 60) said:

Applicant's plea that it has relied upon our past approval of specific dual operations, we think, is without merit. Each successive grant of common or contract carrier authority which would result in dual operations must, under the statute, be accompanied by a finding that such resultant dual operations will be consistent with the public interest and the national transportation policy. Each such finding must be based upon the circumstances existing at the time the particular grant is made and each case must be decided on its own merits. Certainly, the express provisions of the act place applicant on notice that it should not rely upon a grant of temporary authority to foreshadow a subsequent grant of corresponding permanent authority.

Despite the clear warning in the first Sub. 34 report that PMT must, for the future, meet its burden of proof under §210, the Commission's majority here, less than a year and one-half later, in proceedings involving far more widespread operations than those in the prior case,

<sup>29</sup> As noted, p. 5, *supra*, the Sub. 34 proceeding was reopened for reconsideration and consolidated with the other proceedings.

again permits this giant rail-motor combine to ignore the provisions of §210 by failing to present any evidence whatsoever on which a finding that the provisions of that section had been satisfied could properly be based. The gentle wrist slap administered by the majority (R. 32) to the effect that it might consider this issue at some vague future date "should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference" hardly serves as adequate performance of the Commission's obligation under §210 to require applicants seeking dual authority to present evidence *here and now* justifying such a grant, rather than merely relying, as PMT successfully did here, on past operations to satisfy the statutory requirements. Perhaps, in view of the marked contrast between the Commission's action in other cases, such as *Miller* and *Indianhead, supra*, in which it has refused to grant dual authority to independent motor carriers because of the mere possibility of discriminatory practices, and its action here, these appellants can be excused for wondering whether it imposes one, strict standard of proof, when independent carriers are involved and another, far easier standard, when the applicant happens to be a rail affiliate.

The dissenting expression of Commissioner Murphy emphasizes the failings in the majority's report on the issue of dual operations. He stated, in part, as follows (77 M.C.C. 628; R. 37-38):

The objectionable dual operations involved provide a further reason for denying these applications. This question is dealt with summarily in the report even though it is doubtful that there has been a proceeding before us in which exhaustive consideration of this issue was more justified. We have consistently held that the propriety of approving dual operations is to be carefully considered in every proceeding in which this question arises, including those involving subsequent applications by a carrier now conducting



dual operations with our approval, and is to be determined upon the basis of the particular circumstances of each case. I, therefore, do not consider of controlling significance insofar as our disposition of this issue in the instant case is concerned the fact that dual operations by this carrier have been approved in several unopposed application proceedings involving relatively limited contract carrier operations. In my opinion, we would be entirely justified in withholding our approval of further expansion of this carrier's dual operations. (Emphasis supplied)

Commissioner Murphy further stated (77 M.C.C. 628-629; R. 38):

In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of section 210.

The facts of record strongly support our contentions and the above-quoted conclusions of Commissioner Murphy. Southern Pacific serves the assembly plants here involved as the *exclusive* rail carrier, and engages extensively in both the outbound distribution of new automobiles and trucks, and the inbound movement of frames and parts. (R. 187-188, 198, 200, 209-210, 225, 281 and 468). The record is silent on its participation in the outbound distribution of parts and accessories, but at a minimum it is proper to say that it has the opportunity to participate in this traffic either in all-rail movements

or in connection with the coordinated truck services of PMT. If the instant application is granted, Southern Pacific will continue to participate in the outbound movement of automobiles<sup>30</sup> and parts; and it will continue to engage extensively in the inbound movement of frames and parts. (R. 222, 225) The limitation imposed upon the common carrier operating authority of its motor subsidiary will in no way restrict the operations of the rail parent.

This transportation, performed for the same shipper in the same territory raises the very distinct possibility of discriminatory practices. Moreover, Southern Pacific's rail service on behalf of other automobile manufacturers located on the West Coast<sup>31</sup> raises the possibility that it could give preference to GM. The fact that the record does not reflect instances where Southern Pacific has engaged in such discriminatory or preferential practices does not relieve the Commission of its duty to protect against the opportunity for them. *Miller and Indianhead cases, supra*. This obligation is emphasized by the fact that severe rate competition for automobile traffic exists between rail and motor carriers. This has been commented upon by the Commission in several cases. See, e.g., *Passenger Automobiles in Southern Territory*, 288 I.C.C. 85, 93; *Chrysler Corp. v. Akron, C. & Y. R. Co.*, 279 I.C.C. 377, 416.

In addition to the rail operations of Southern Pacific, PMT as a motor carrier serves the plants of GM on both inbound and outbound shipments (R. 199-200, 346).

Considering the opportunities for discriminatory practices inherent in the multiple rail and motor operations

<sup>30</sup> Although the Traffic Director of the Chevrolet Division (R. 207) indicated that eventually all traffic from the California plants involved would move by PMT. R. 223.

<sup>31</sup> For example, the record (R. 468) indicates that PMT's rail parent serves the Ford plant at Milpitas, Calif.

involved, we submit that the majority made a useless gesture in "depriving" PMT of the opportunity to transport GM automobiles as a common carrier. This "remedial" action blithely ignores the very real danger of violating the underlying policy of §210, resulting from PMT's other common carrier authority, coupled with the extensive motor contract rights granted, all added to the common carrier operations of its rail parent. The only possible way of eliminating the most objectionable feature of dual operations here involved would be to require PMT's rail parent to cease serving the GM plants. While this undoubtedly would not be acceptable to Southern Pacific, it is equivalent to a requirement which the Commission often imposes on independent motor carriers to eliminate the opportunity for discriminatory and preferential practices. In *Lindner Bros. Trucking Inc., Extension-Groceries*, 77 M.C.C. 651, 652, decided September 29, 1958, the entire Commission said:

It is apparent that the granting of authority here to serve points now served by Advance would place that carrier and applicant in a position to engage in discriminatory practices in such commonly authorized territory. To give effect to the mandate of section 210, opportunities for discrimination must be avoided.

Here we believe that modification of the findings in our prior report so as to prohibit service by Advance from the shipper's plant sites and warehouse facilities at Chicago would substantially lessen the opportunity for discrimination.

To sum up: As so clearly pointed out in Commissioner Murphy's dissent, the Commission's majority has "summarily" treated the very important issue of dual operations. Its failure to require PMT to meet the burden of §210, disregarding as it does its own admonition in the first Sub. 34 case that reliance on past operations would not support future grants of dual authority, constitutes a clear abuse of discretion. Further, its favored treat-

ment of the rail subsidiary, contrasted with its strict application of the standards of §210 when independent motor carriers are involved, constitutes the very antithesis of the "fair and impartial regulation of all modes of transportation" required by the National Transportation Policy.

**The Holding of The Majority Below That Plaintiffs Lacked Standing to Sue is Clearly Erroneous.**

A majority of the court below held that plaintiffs lacked standing to bring this action in the District Court. This contention, made by PMT and General Motors, the intervening defendants, but not by the Commission, is based on the argument that plaintiff motor carriers were not a party in interest within the meaning of Section 205(g) of the Interstate Commerce Act, 49 U.S.C. §305(g), Appendix B, p. 3a, *infra*. The majority, however, conceded that, had the complaint been filed by some qualified "party in interest," all plaintiffs could have intervened pursuant to 28 U.S.C. §2323, 170 F. Supp. 48; R. 86. This raises the provocative question, not answered by the majority below, of just who is a "party in interest" in a case such as this if not the protestant motor carriers before the Commission? Who except them could be expected to contest the Commission's action, or who would have a greater right to take such action?

The majority below appears to have relied upon *Atchison, Topeka and Santa Fe Railway Co. v. United States*, 130 F. Supp. 76, *aff'd. per curiam*, 350 U.S. 892, as justifying its action here.<sup>32</sup> But that case merely held that rail protestants before the Commission were without standing to sue to set aside an I.C.C. order authorizing a

<sup>32</sup> We say the majority appears to have relied on the cited case because it is referred to in its recitation of the contentions of interveners on this point, although not cited by the majority specifically as grounds for its action.

merger of *motor carrier* applicants. A comparable situation, not present here, would be an effort by motor carriers to block the merger of two rail lines which the Commission had authorized.

The majority also noted that PMT and GM contended that *Pittsburgh & West Virginia Ry. Co. v. United States*, 281 U.S. 479, indicates that participation as interveners in a Commission proceeding does not *alone* furnish a basis for the required "interest" to institute suit to set aside a Commission order. We have never said it does.

We believe the *Alton Railroad* and *Interstate Council* cases next discussed clearly support our right to sue to set aside the order here involved.

In *Alton R. Co. v. United States*, 315 U.S. 15 (1942), the shoe was on the other foot. There, a large group of railroads sued to set aside a Commission order authorizing the transportation of automobiles by one Fleming. Although most of the railroads had been parties to the proceeding before the Commission, their standing to bring suit to set aside its order was challenged. This Court said, *Id.*, at 19-20:

They [the railroad companies] clearly have a stake as carriers in the transportation situation which the order of the Commission affected. They are competitors of Fleming for automobile traffic in territory served by him. They are transportation agencies directly affected by competition with the motor transport industry—competition which prior to the Motor Carrier Act of 1935 had proved destructive. S.Doc. No. 152, 73d Cong., 2d Sess., pp. 13-27. They are members of the national transportation system which that Act was designated to coordinate. S. Rep. No. 482, 74th Cong., 1st Sess.; H. Rep. No. 1645, 74th Cong., 1st Sess. Hence they are parties in interest within the meaning of §205(h) under the tests announced in *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U.S. 266, 46 S.Ct. 263, 70 L.Ed. 578; *Western Pacific California R. Co. v. South-*



ern Pacific Co., 284 U.S. 47, 52 S.Ct. 56, 76 L. Ed. 160, and Claiborne-Annapolis Ferry Co. v. United States, supra.

In *Interstate Common Carrier Council of Maryland, Inc. v. United States*, 84 F. Supp. 414 (1949), an organization representing numerous motor carriers brought suit to set aside a Commission order granting so-called alternate route authority to another motor carrier. In that case, the United States and the Interstate Commerce Commission, defendants, challenged the sufficiency of interest of the Council to bring the suit. The three-judge court held against the defendants, stating, *Id.*, at 422:

With respect to the alleged incapacity of the Council the defendants rely largely on *Merchant Truckmen's Bureau of New York v. United States, D.C.*, 16 F.Supp. 998, 999, where, in a somewhat similar case affecting the capacity of a membership corporation to maintain a suit to set aside an order of the Commission relating to the operation of a pick-up and delivery service by railroads, a three-judge court expressed doubt whether the association had the capacity to maintain the suit as a party in interest. That case was decided in 1936. But we think that the doubt there expressed under the earlier statute there involved has been sufficiently dispelled by what was said by the United States Supreme Court in *Alton R. Co. v. United States*, 315 U.S. 15, 18 and 19, 62 S.Ct. 432, 86 L.Ed. 586, the latter case dealing particularly with a complaint to set aside an order of the Commission under title 2 of the Transportation Act affecting motor carriers. As we read the latter case it seems to make it clear that a party in interest mentioned in §305(g) is not necessarily a person or corporation which was a party to the proceeding before the Commission, but may be one who has a real stake in the transportation statute which the order of the Commission affects. Thus, even if the Interstate Council is to be regarded as disqualified, the other complainants have sufficient capacity to sue.

Finally, we submit that the familiar rule requiring construction to avoid absurd results militates against the

holding of the majority below. Congress has clearly taken pains to subject Commission decisions to judicial review, even those formerly held exempt as "negative" orders. Yet the majority of the Court below has carved out a large exception, not based on any clearly delineated statutory language, but rather on the assumption that General Motors (or at least its Chevrolet Division) once having spoken, will never change its mind. The syllogism, roughly, amounts to this: The Chevrolet Division will not use the services of (1) motor common carriers, or (2) carriers who haul their competitors' automobiles; appellant motor carriers fall in one or both of these categories, and will therefore never be given any GM traffic; since they will get no traffic in any event they cannot be damaged by the Commission's grant of unrestricted authority to PMT, and therefore are not parties in interest within the meaning of §205(g). The application of this rationale leads to decidedly incongruous results. The policy underlying the proviso of §5(2)(b), like any other statutory provision that we know of, is not self-executing. Whether it is assumed that the policy represents an effort by Congress to protect the motor carriers from rail encroachment for their own benefit, or whether the intent was to serve the larger public interest by preventing rail domination of an otherwise competitive industry, one fact remains. The decision of the majority below insulates the order of the Commission here involved from challenge by any party to the proceeding before it. Suppose, for example, that the Commission, instead of purporting to comply with the Congressional mandate, had baldly stated that it could ignore it whenever it chose to do so? Under the reasoning of the majority of the court below, these appellants would still have had no standing to sue, because of GM's statement of intentions.

In the final analysis, the holding of the majority puts a shipper supporting an application before the Commission in the position of deciding whether or not protesting

carriers before that agency will have standing to challenge the Commission's order if it grants authority to the favored carrier. Suppose that GM, in this proceeding, had stated that if the Commission should deny PMT's application it would use the services of the protestant carriers? Presumably that would have given them standing to challenge the order here, since they then could claim dollar damage. We submit that such construction squarely conflicts with the Congressional intent underlying §5(2)(b) and the usual rule that for every right there is a remedy!

### CONCLUSION AND PRAYER

The report and order of the Commission under review, authorizing the wholly-owned subsidiary of the Southern Pacific Railroad to perform extensive unrestricted motor contract carrier service in the transportation of automobile traffic for GM, while at the same time it performs common carrier operations for the same shipper with respect to other traffic, and its rail parent transports, as a common carrier, the identical commodities between the same points and places—all without any showing of exceptional circumstances which justify the Commission's departure from the Congressional policy against such grants of authority—is unsupported by and contrary to the evidence of record and contrary to law, to wit, the National Transportation Policy and Sections 5(2)(b), 209 and 210 of the Interstate Commerce Act.

The finding by the District Court, directly contrary to that of the Commission, that the testimony presented before the agency by applicant PMT and its supporting shipper, GM, constituted evidence of special circumstances justifying a grant of unrestricted authority, exceeds the court's powers on judicial review. Further, the holding by a majority of the court below that plaintiffs lacked standing to bring court action to review the Commission's report and order is clearly erroneous.

WHEREFORE, appellants pray that the judgment of the District Court be reversed and the case remanded with instructions to set aside the Commission's report and order, and require it to cancel the permit issued to PMT covering the operations authorized, and for disposition otherwise consistent with this Court's opinion.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Peter T. Beardsley, one of the attorneys for appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the twenty-fifth day of March, 1960, I served copies of the foregoing document on the several parties thereto, as follows:

1. On the United States, by mailing copies, in duly addressed envelopes, with postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C., and Willard R. Memler, Esq., Department of Justice, Room 263, 131 Indiana Ave., N. W., Washington, D. C.

2. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Assistant General Counsel, at the offices of the Commission, Washington 25, D. C.

3. On Pacific Motor Trucking Co., by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert L. Pierce and William E. Meinhold, Esqs., 65 Market Street, San Francisco 5, California, and with postage prepaid, to Edward M. Reidy, Esq., Room 465, 1120 Connecticut Ave., N. W., Washington, D. C., and Thormund A. Miller, Esq., 205 Transportation Bldg., Washington 6, D. C.

4. On General Motors Corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Henry M. Hogan and Walter R. Frizzell, Esqs., 3044 West Grand Blvd., Detroit 2, Michigan, and with postage prepaid to Beverley S. Simms, Esq., 612 Barr Building, 910 17th Street, N. W., Washington 6, D. C.

PETER T. BEARDSLEY



**APPENDIX A****NATIONAL TRANSPORTATION POLICY**

[September 18, 1940.] [49 U.S.C., preceding § 1, 301, 901, and 1001.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

**COMBINATIONS AND CONSOLIDATIONS OF CARRIERS**

Sec. 5. [As amended August 24, 1912, February 28, 1920, June 10, 1921, June 16, 1933, June 19, 1934, August 9, 1935, September 18, 1940, and August 2, 1949.] [49 U.S.C. § 5.]

. . . . .

(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and in case carriers by motor vehicle are involved, the persons specified in Section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of sub-

paragraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

### SUIT TO SET ASIDE COMMISSION ORDER

Sec. 17(9). [September 18, 1940.] [49 U.S.C. § 17(9).]

(9) When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

### JUDICIAL REVIEW OF ORDERS . .

Sec. 205(g). [August 9, 1935, amended September 18, 1940, and May 24, 1949.] [49 U.S.C. § 305(g).]

(g) Any final order made under this part shall be subject to the same right of relief in court by any party

in interest as is now provided in respect to orders of the Commission made under Part I: *Provided*, That where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under Section 2284 of Title 28 of the United States Code, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

## INCORPORATION OF PROVISIONS OF SECTION 17

Sec. 205(h). [August 9, 1935, amended September 18, 1940.] [49 U.S.C. § 305(h).]

(h) All the provisions of Section 17 of Part I shall apply to all proceedings under this part.

## ISSUANCE OF CERTIFICATE

Sec. 207(a). [August 9, 1935.] [49 U.S.C. § 307(a).]

(a) Subject to Section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

**PERMITS FOR CONTRACT CARRIERS BY  
MOTOR VEHICLE**

Sec. 209(b). [August 9, 1935, amended June 29, 1938, September 18, 1940, September 1, 1950, and August 22, 1957.] [49 U.S.C. § 309(b).]

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to Section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this part and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms,



conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6): *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless, upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203(a)(15), as in force on and after the effective date of this proviso.

### DUAL OPERATIONS

Sec. 210. [August 9, 1935, amended September 18, 1940] [49 U.S.C. § 310.] Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over

a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory; and

(2) No person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory.

## APPENDIX B

### Testimony of Appellant Motor Carriers Regarding Their Facilities and Willingness To Serve General Motors

*David M. Lee, Vice President and General Manager, Robertson Truckaways, Los Angeles, Calif.* His company has authority to perform initial movements of automobiles from Los Angeles to points in California, Oregon, Nevada and Arizona. This authority includes the right to serve South Gate, Van Nuys and Raymer. R. 426; Exhibits 98, 100, and 105, R. 569, 585, 591. Robertson has been engaged in the transportation of automobiles for twenty-eight years, and provides extensive daily service to states adjoining California. R. 424-425.

The major percentage of Robertson's business is with Chrysler (R. 425), but the witness stated that some traffic was moved from the Chevrolet plant at Raymer on Government bills of lading (R. 425, 430), and referred to a movement of Oldsmobiles from the B-O-P plant at South Gate. R. 433. Two loads were also handled from the B-O-P plant to San Francisco in 1955. R. 441.

The equipment operated by his company is suitable for the transportation of General Motors automobiles, and no difficulty, equipment-wise, has been experienced in handling GM cars. R. 424, 425, 426.

Robertson has solicited GM for business frequently. R. 426, 429. It is ready, willing and able to transport GM automobiles, wants the traffic very much, has the necessary equipment to handle GM cars and is financially able to add additional equipment if needed. R. 426-427. However, except for the movements on Government bills of lading and the few hauls out of the B-O-P plant, it has not secured any GM business, although it was told that GM was aware of its service and had copies of its tariff R. 430.

New storage facilities would be acquired near the GM plants involved if Robertson were given GM traffic. R. 439. Traffic is presently being interchanged with other automobile carriers and similar service would be provided for GM traffic destined to points not served directly by Robertson. R. 433-434.

Robertson also has secondary authority from points within twenty miles of San Leandro, California (which includes Oakland) to the eleven western states. R. 427, 434.

*T. J. Young, Vice President, Hadley Auto Transport, Long Beach, Calif.* Hadley, a contract carrier, maintains terminals at Long Beach and Milpitas, and a storage yard at Los Angeles. R. 443-444.

Hadley has extensive authority to transport automobiles, in initial movements, in truckaway service. Exhibit 107 (R. 594-598). The map introduced as Exhibit 108 (R. 599) shows the extent of such authority from Richmond and points in Los Angeles County to points in various states. This authority constitutes a substantial portion of the territory sought by the PMT application, and its equipment (listed in Exhibit 109; R. 600-603) can be used in the transportation of various types and forms of motor vehicles, including those produced by General Motors. R. 444-445.

Hadley has been engaged in the transportation of automobiles for twenty-five years (R. 447) and performs a daily service into the States of Arizona, Nevada, Utah and New Mexico in initial movements, with less frequent service to Montana and Idaho. R. 445. The extent of this service can be measured by Exhibit 110 (R. 604), showing cities served in the States of Arizona, Idaho, Nevada, New Mexico, Utah, and Montana, and by Exhibit 111 (R. 605), showing the number of vehicles transported during 1956 from Los Angeles County to the States of

Arizona, New Mexico, Nevada, Utah, Idaho, Wyoming, and Montana. This protestant is ready, willing and able to secure any additional equipment needed because of new business, and would be willing to enter into a contract with General Motors for the transportation of its automobiles. It would seek any additional authority which might be needed in order to provide the service desired by GM. R. 445, 446.

Hadley has transported automobiles manufactured by GM (R. 445) and until two or three years ago, had contracts for the initial movement of Nash and Willys automobiles from plants located at El Segundo and Vernon, Calif., respectively, into a number of states. R. 450.

L. F. Weisler, President of Convoy Co., San Jose, Calif. Convoy, a motor common carrier, maintains terminals and other facilities at Seattle, Portland, Los Angeles, San Jose, Billings, Mont. and Laramie, Wyo. A new terminal, to be finished by mid-summer, is being built at Los Angeles. R. 453-454; Exhibit 115, R. 620-621.

Exhibit 114 (R. 615-619) describes Convoy's authority from various points and places, including truckaway service in initial movements from Richmond, Calif., to points in Idaho, Washington and Oregon. R. 454, 462. The authority to serve Richmond includes the right to serve Oakland under the Commission's rules respecting commercial zones, and service is offered on that basis. R. 455.

Exhibit 116 (R. 622-630) lists the equipment operated, including 181 revenue trucks and tractors, 203 revenue trailers and semi-trailers and 31 service cars and trucks. Most of the equipment is of six car or truck-capacity, except that a few of the older rigs are five-unit. Since the exhibit was prepared, twenty new trucks have been added, most of them now in operation. Half of the equipment listed in Exhibit 116 has been put in service since the first of 1955. R. 455-456.



Convoy is able to accommodate all demands for service made upon it and could handle added traffic from GM at Oakland. If existing equipment should prove insufficient, it could acquire any additional equipment needed. R. 456.

Convoy interlines with other motor carriers and could effect such arrangements for the traffic involved in this proceeding. It would perform a single-line initial service from Oakland to points in Oregon, Idaho, and Washington. R. 457.

In 1954, Convoy solicited business from the Oakland Chevrolet plant, submitting a detailed proposal covering service and charges into the Northwest states. R. 458. Convoy has also solicited GM business on a joint rail-truck basis from Rainer and South Gate. R. 463-464.

Convoy transports vehicles for a great many GM dealers in secondary movements. It has handled occasional movements from the Oakland Chevrolet plant and considers the traffic attractive. R. 459. It is willing to establish such terminal facilities at or near the GM Oakland plant as would be needed to handle any GM traffic which might be offered. R. 465.

By stipulation, the operating authority of, and equipment operated by, B. & H. Transportation, as set forth in Exhibits 121 and 122, was received in evidence. R. 466. This authority includes the right to transport automobiles, both truckaway and driveaway, in initial movements, from Vernon (in the Los Angeles commercial zone) to all points and places in Arizona, Nevada, and the Los Angeles Harbor commercial zone. Exhibit 121, R. 637.

Also by stipulation, exhibits reflecting the operating rights, equipment facilities and methods of operation of Kenosha Auto Transport and Western Auto Transport were filed subsequent to the close of the hearing. R. 25, 469-470.

Western Auto Transports, Inc., is authorized to provide service by truckaway and driveaway, in both initial and secondary movements. Included in its rights are truckaway authority, in initial movements, from Los Angeles (Raymer and South Gate) to all points and places in Utah, and secondary authority between all points and places in California, Idaho, Nevada, Utah and Washington. It maintains terminals, among other places, at Los Angeles and Richmond, Calif., and is fully equipped to handle the traffic. If requested, Western would apply for authority to serve the GM plants in Los Angeles and Oakland, to any destination territory not presently served. R. 25-26.

Kenosha Auto Transports Corp., if requested, would apply for authority to serve the GM plants in Los Angeles and Oakland in initial movements in truckaway and driveaway service to the destination territory involved herein. R. 26.

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APR 26 1959

JAMES R. BROWNING, Clerk

# In the Supreme Court of the United States

OCTOBER TERM, 1959

**No. 74**

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
et al.,

*Appellants,*

vs.

UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, et al.

Appeal from the United States District Court  
for the District of Columbia

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# In the Supreme Court of the United States

OCTOBER TERM, 1959

**No. 74**

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
et al.,

*Appellants,*

VS.

UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, et al.

Appeal from the United States District Court  
for the District of Columbia

**Brief for Appellees**  
**Pacific Motor Trucking Company**  
**and**  
**General Motors Corporation**

## **OPINION BELOW**

The opinion of the District Court (R. 70) is reported in 170 F. Supp. 38. The involved reports of the Interstate Commerce Commission (R. 54, 8) are published in 71 M.C.C. 561 and 77 M.C.C. 605.

## **JURISDICTION**

The final order of the District Court was entered January 30, 1959, (R. 87). Notice of Appeal was filed March 27, 1959 (R. 88). Jurisdiction of this Court is invoked under



28 U.S.C. § 1253 (R. 89). Probable jurisdiction was noted on October 12, 1959 (R. 92).

### STATUTES INVOLVED

The relevant provisions of the Interstate Commerce Act, including the National Transportation Policy (49 U.S.C., preceding §§ 1, 301, 901 and 1001); § 5(2)(a) and (b) (49 U.S.C. § 5(2)(a), (b)); § 205 (g) (49 U.S.C. § 305(g)); § 208(a) (49 U.S.C. § 308(a)); § 209(b) (49 U.S.C. § 309(b)); § 210 (49 U.S.C. § 310); and § 216(c) (49 U.S.C. § 316(c)), and Public Law 85-163 of August 22, 1957 (71 Stat. 411) are set forth in Appendix A *infra*, p. 1.

### QUESTIONS PRESENTED

Appellants' Brief, pages 2 and 3, does not accurately set forth the questions presented. Appellees submit that the actual issues are as follows:

1. The Interstate Commerce Commission granted a contract carrier permit to a motor carrier subsidiary of a railroad but imposed a restriction confining the service to points on the lines of the parent railroad, a limitation which it described as one of "the restrictions usually imposed in common carrier certificates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service." The question thus presented is whether, under section 209(b) of the Interstate Commerce Act, as amended August 22, 1957, and the National Transportation Policy, and in the absence of "unusual conditions" such as those disclosed in *American Trucking Ass'n v. United States*, 355 U.S. 141 (1957), the Commission lawfully refused to impose additional restrictions, usually imposed in common carrier certificates intended to make the service auxiliary to or sup-

plemental to rail service, where it appeared that such restrictions would convert the applicant into a common carrier.

2. Section 210 of the Interstate Commerce Act prohibits a person holding a contract carrier permit when such person or a person controlling such person holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory, unless the Commission finds that this is consistent with the public interest and the National Transportation Policy. Two questions are presented in this connection:

(a) Did the Commission violate the policy of this section where it granted a contract carrier permit to a motor carrier whose parent company operated as a common carrier by rail in the same territory?

(b) Did it violate the policy of this section where the contract carrier also operated as a common carrier by motor vehicle in the same territory, but where the Commission made the required ultimate finding that such dual operation was consistent with the public interest and the National Transportation Policy, and in support thereof required the motor carrier applicant to waive all right to transport the same commodities as a motor common carrier, found that applicant's past service in a dual capacity had been without criticism, and reserved the right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference?

3. Whether complaining motor carriers and their trade associations have standing to sue to set aside an order of the Commission granting a contract carrier permit to another motor carrier to transport commodities where the Commission finds that its order would have no adverse

competitive effect upon the traffic of the complaining motor carriers because the commodities involved were presently moving exclusively by rail and because, even if the permit were denied, there would be no diversion of the traffic to the complaining motor carriers?

### STATEMENT

This is a direct appeal, pursuant to 28 U.S.C. § 1253, from the final decree, dated January 30, 1959, (R. 87) and decision (R. 71) of a specially constituted three-judge District Court, which dismissed on the merits appellants' complaint to set aside an order of the Interstate Commerce Commission. A majority of the court dismissed the complaint on the further ground that the appellants had no standing to sue (R. 85-86).

Appellants are three motor carrier trade associations (American Trucking Associations, Inc., Contract Carrier Conference of American Trucking Associations, and National Automobile Transporters Association) and six motor carriers (common carriers: Convoy Company, Robertson Truck-A-Ways, Inc., Western Auto Transports, Inc., and Kenosha Auto Transport Corp.; and contract carriers: B & H Truckaway, and Hadley Auto Transport). The Commission's report and order under attack, dated September 9, 1958, (R. 8) granted a motor contract carrier permit under section 209(b) of the Interstate Commerce Act (49 U.S.C. § 309(b)) to Pacific Motor Trucking Company (referred to herein as PMT) to transport automobiles and trucks from the plants of the General Motors Corporation (hereinafter referred to as GM), situated in Oakland, Raymer, and South Gate, Calif.<sup>1</sup> in interstate commerce to points in other

1. The Oakland and Raymer plants are engaged in the manufacture of Chevrolets while the South Gate plant manufactures Buicks, Oldsmobiles and Pontiacs. Raymer and South Gate are situated in the Los Angeles area.

western states as hereinafter described. PMT is a wholly-owned motor common and contract carrier subsidiary of Southern Pacific Company (hereinafter referred to as SP), which is a common carrier by railroad operating in California, Nevada, Oregon, Utah, Arizona, New Mexico and Texas.

Both PMT and GM were permitted to intervene as defendants in these proceedings (R. 74), filed answers (R. 46, 64), and participated in the oral argument. The Interstate Commerce Commission, named as a defendant, filed an answer (R. 68) and defended the case. The United States, also named as a defendant, filed an answer (R. 67), stating (R. 68, 74): "The United States does not participate in the defense of the Commission's order but does not oppose its defense." Of such answer the District Court stated (footnote 1, R. 74):

"This is of particular significance in view of the fact that the United States on occasion has seen fit to oppose actively orders of the Interstate Commerce Commission."

PMT, at the time of the filing of the involved applications with the Interstate Commerce Commission, was engaged as a common carrier, and also for a long time, as a contract carrier, exclusively for GM in both California intrastate commerce and interstate commerce. The scope of its interstate common carrier authority was described thus by the Commission (R. 18):

"Applicant, a wholly-owned subsidiary of Southern Pacific Company, a common carrier by railroad, presently holds various certificates issued by this Commission authorizing the transportation as a common carrier of general commodities, with certain exceptions, between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes paralleling generally the rail lines of Southern Pacific.

This common-carrier authority, except between certain origins and destinations in Oregon and California, is, with minor exceptions, restricted to service which is auxiliary to or supplemental of the rail service of its proprietary railroad."

Its existing intrastate and interstate contract carrier authority to transport automobiles and trucks for GM was described by the District Court as follows (R. 71-72):

"PMT since December 10, 1935<sup>a</sup> has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and drive-away service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub 23, issued June 20, 1944); (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub. 27, issued April 21, 1950); (3) from Raymer, California, to points in the Los Angeles Harbor Commercial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950); and (4) from Oakland, California, to Carson City and Minden, Nevada, both being non-rail points (MC 78787, Sub. 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications involved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California."



The scope of the proceedings before the Commission was, set forth by the District Court thus (R. 72):

"The order complained of grew out of extensive proceedings before the Commission following the filing of the four applications by PMT, seeking to extend its service as a contract carrier for GM in the Pacific Coast area for the transportation of a single commodity, new automobiles and trucks. In general, by the Sub 34 application, PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, California, to all Oregon points which are stations on SP; by the Sub 35 application the right to serve three additional non-rail points<sup>2</sup> in Nevada from Oakland, California; by the Sub 36 application, to serve all Arizona points which are stations on SP; and by the Sub 37 application, authority to round out its service areas from the Oakland and Raymer plants to include all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico, whether or not they are stations on SP, and to begin new service from the Buick-Oldsmobile-Pontiac plant at South Gate, California, to a seven-state area, namely, Washington, Oregon, Idaho, Nevada, Utah, Arizona, and Montana."

It is significant, as the Commission's decision shows, that though the instant applications involved a rather broad geographic extension of PMT's contract carrier authority for GM, traffic-wise they presented but a minor extension. Thus the Commission stated that PMT was presently "providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California and to interstate points within the scope of its existing permits" (R. 22). Furthermore, its report indicates (R. 21) that only a relatively small portion

2. Austin, Tonopah and Yerington, Nevada.

of the total output of the Oakland and Raymer plants was moving to points outside of California involved in these applications.

Appellant truck lines' operating authority is described in detail in the Commission's decision (R. 24-26). From this it appears that, with the exception of Kerosha Auto Transports Corp., the six appellant truckers had certain authority to transport automobiles between some of the points involved, but that neither singly nor together did they possess the right to perform the entire transportation which PMT sought to perform, nor to perform any of the service involved in the Sub 35 application (i.e., service from Oakland, California, to Austin, Tonopah and Yerington, Nevada).

A word is appropriate here as to the proceedings before the Commission and as to the participation therein by appellants. The Sub 34 application was heard on a separate record, none of the appellants participating as protestants, and after oral argument was granted by the entire Commission in its decision of May 8, 1957 (R. 10, 12, 54). The Sub 35 and 36 applications were heard on a consolidated record and proposed reports by an examiner and a joint board, respectively, recommended that the authority be granted (R. 13). None of the appellants filed exceptions in the Sub 35 case but it was stayed by Division 1 of the Commission to give consideration to the question of dual operations (R. 13). Three of the truck line appellants, Robertson, B & H, and Hadley, filed exceptions to the proposed report in the Sub 36 case (R. 13). All motor carrier appellants presented evidence in opposition to the Sub 37 application which was heard on a separate record (R. 10).

23) as did also six rail protestants connecting with SP<sup>3</sup> which handled the GM auto traffic in joint rail service with SP (R. 23). Exceptions to a proposed report in the Sub 37 case were filed by the three trade association appellants, by four of the individual motor carrier appellants and by the opposing rail carriers, while PMT and GM also excepted to the recommended denial of part of the sought authority (R. 14, 16). Thereafter, upon petition of American Trucking Associations, Inc., and Contract Carrier Conference of American Trucking Associations, Inc., the Commission reopened the Sub 34 case "for reconsideration on the present record solely with respect to whether the motor-contract carrier authority granted therein should be made subject to the substituted-service restrictions usually imposed in certificates issued to rail carriers or motor affiliates of rail carriers" (R. 12). Subsequently the Sub 34 proceedings and the three other applications were consolidated for oral argument in which all of the appellants participated (R. 10, 12).

There followed the Commission's report and order of September 9, 1958, (R. 8), now under attack, the effect of which was well described by the District Court as follows (R. 72):

3. The rail protestants were (1) the Union Pacific Railroad Company which connects with Southern Pacific at Los Angeles and serves points in Nevada, Utah, Idaho, and Montana, (2) the Northern Pacific Railway Company which connects with Southern Pacific at Portland, Ore., and serves points in Washington, Idaho, and Montana, (3) the Great Northern Railway Company which connects with Southern Pacific at Portland and there receives traffic moving to destinations in Washington, Idaho, and Montana, (4) the Spokane, Portland & Seattle Railway, hereinafter called SP&S, a jointly-owned subsidiary of Great Northern and Northern Pacific, operating between Portland, Ore., and Spokane, Wash., (5) the Bamberger Railroad Company, hereinafter called Bamberger, connecting with Southern Pacific at Ogden, Utah, and operating between Ogden and Salt Lake City, Utah, and (6) the Portland Traction Company, a short-line carrier serving the Portland, Ore., area (R. 23).

"By the order here under attack, the Commission granted the authority sought in the Sub 35 proceeding, service from the Oakland plant to three additional non-rail points in Nevada, which had been opposed by only one protestant, not a party to this action; but as to the Sub 34, 36 and 37 applications, the Commission denied entirely the authority requested to serve destinations in states not served by SP (Washington, Idaho, and Montana) and limited the authority granted to destinations in the other states (Arizona, Nevada, Oregon, Utah, and New Mexico) to points located on the rail lines of SP. Thus, the Commission's order granted only a limited portion of the authority sought in the four applications, and issuance of the new permits thereunder was conditioned on curtailment of existing common carrier authority to transport automobiles and trucks."

During the interval between the two Commission decisions in this matter Congress on August 22, 1957, adopted Public Law 85-163, 71 Stat. 411) which materially amended the provisions of the Interstate Commerce Act dealing with contract carriers. The amendment changed the definition of "contract carrier by motor vehicle" in section 203(a)(15) of the Interstate Commerce Act (49 U.S.C. § 303(a)(15)) to read as follows:

"The term 'contract carrier by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exceptions therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

It also added the following new sentence to section 209(b) of the Interstate Commerce Act dealing with issuance of contract carrier permits:

"In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

It is abundantly clear that the Commission in its decision carefully considered and applied both the above important amendments achieved by the 1957 Act.

Thus, after quoting the new definition of "contract carrier by motor vehicle" the Commission found (R. 19):

"Applicant proposes to render a service only for General Motors, the only shipper it presently serves, and to assign its equipment to the exclusive use of that shipper. Clearly its proposed service will be that of a contract carrier."

With respect to the Commission's consideration of the criteria specified in section 209(b), as amended in 1957, the District Court stated (R. 79-83):

"The order here challenged shows on its face that the Commission did consider those criteria, making findings with respect to each of them.

"As to the number of shippers to be served by the applicant and the nature of the service proposed, the Commission found the evidence established that PMT's sole purpose was to afford GM extended driveaway and truckaway transportation of new cars and trucks from GM's plants at Oakland, Raymer, and South



Gate, California, and that PMT's equipment was to be assigned to the exclusive use of that shipper.

"As to the effect of granting the permit upon the services of protesting carriers, both rail and motor, the Commission made detailed findings as to the amount of GM traffic theretofore handled, or not handled, by the protesting carriers, both rail and motor. Careful consideration was given to the probable loss of GM traffic by rail carriers in joint-line service with SP, if authority were granted to PMT to serve points beyond SP's line, and the probable loss to a motor carrier presently serving GM dealers in Washington and Alaska, if PMT should be authorized to operate within the State of Washington. The Commission also weighed the effect on other independent motor carriers, both common and contract, authorized to serve any of the areas affected by the proposed extension of authority. It found that Hadley, one of the two protesting contract carriers, was dedicated to serving Ford, GM's largest competitor, that B & H, the other protesting contract carrier, possessed limited authority for operations from Vernon, California, and had in the past served Studebaker-Packard, and that Robertson, a common carrier protestant, transported vehicles principally for Chrysler.

"As to the effect denial of the permit would have upon the applicant and the shipper and the changing character of the shipper's requirements, the Commission found that the shipper, GM, had established its need for extension of the personalized type of contract service which PMT had been rendering it, and rendering well, from other points for many years; that in view of the limited storage facilities maintained by GM at its plants, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers; that use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant,

which are geared to use of PMT's services from its nearby yard. The proposed extension of service was supported by GM in order to obtain faster transportation on shipments requiring expedited handling, direct deliveries to dealers at off-rail points, more flexible and expeditious handling of consolidated shipments, and to meet the competition of other automobile manufacturers, notably Ford and Chrysler, which have motor services available. The Commission further found that, should the requested authority be denied, GM had indicated it would not use the services of the protesting motor carriers, but either would support an application for similar authority by an independent motor contract carrier presently serving a GM branch plant at Arlington, Texas, or would institute proprietary operations. The order further shows that denial of the permit would cause substantial damage to the applicant, PMT, which has dedicated its contract carrier service to GM operations for many years, acquiring special equipment to meet GM's needs, and that PMT's contract carrier operations for GM during the years 1953 through the first eleven months of 1956 averaged 86.35% of PMT's total contract carrier operations. Thus, although the Commission found an 'absence of unusual conditions' which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM.

\*     \*     \*     \*     \*     \*     \*

"That the Commission did apply the Act as a whole, giving effect to the policies underlying §§ 5(2)(b), 207, and 210, as well as carefully following the guide laid down by the Congress in § 209(b) for determining public interest and compliance with the national transportation policy, is borne out not only by the findings of fact recited in the Commission's order, but by its conclusions as to the scope of extended operations.

which would be in the public interest, and by the curtailed authority which the Commission granted. It will be observed that the requested authority was denied where it would encroach upon existing service by other carriers, and granted where the evidence of record showed that the proposed extension would have little or no effect upon present and future operations of the protestants."

The last statement of the court is fully borne out in the following excerpt from the Commission's decision (R.26-28):

*"We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand, use by General Motors of applicant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. . . . On the other hand, insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves,*

as a rail carrier. Motor protestants argue that the grant of authority to such points as recommended by the examiner reflects a discriminatory bias favoring the protesting railroads and penalizing the protesting motor carriers. *However, it is clear that all of the traffic except that moving on government bills of lading<sup>4</sup> is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers.*" (Emphasis added.)

Finally the Commission made the required ultimate findings under both sections 209(b) and 210 of the Interstate Commerce Act to the effect that the operations of PMT as ultimately granted, and that its dual operations as a common and contract carrier, would be consistent with the public interest and the National Transportation Policy (R. 33).<sup>5</sup>

4. It is apparent that the granting of the present authority to PMT will have no effect whatsoever on the traffic moving on government bills of lading. Thus, in this connection, the Commission found (R. 21): "A small number of automobiles and trucks manufactured at these three plants move on government bills of lading in which the government agency concerned rather than General Motors designates the transporter. These shipments have for the most part been handled by existing motor common carriers, including Convoy, Insured Transporters, and Robinson" [sic. Robertson].

5. The printed record (R. 33) should contain the following additional language after "require," line 11, R. 33: "will be consistent with the public interest and the national transportation policy". Such language, being the required ultimate finding under section 209(b) was inadvertently omitted in the Commission's decision, as originally transmitted to the parties, but was soon corrected and is shown in the published report (77 M.C.C. 605).

Discussion of the Commission's remarks and subordinate findings concerning the questions of "auxiliary and supplemental restrictions" and "dual operations" raised by appellants will be deferred to the argument below.

Appellants' motion for a temporary restraining order was denied after hearing (R. 33). On November 24, 1958, permits for the operations authorized by the Commission's order were issued by the Commission (R. 73). Appellants thereafter abandoned their prayer for an interlocutory injunction and the case was heard by the three-judge court on the merits.

### **SUMMARY OF ARGUMENT**

I. Appellants' contentions that the Commission violated congressional policy and this court's decisions dealing with motor carrier operations of railroad subsidiaries are based on the major premise that the Commission here granted PMT "unrestricted authority" so far as the usual restrictions to make operations of a railroad motor carrier subsidiary "auxiliary and supplemental" to the rail service of its parent are concerned. This major premise is patently incorrect as the District Court properly recognized. Thus, the Commission specifically listed five restrictions, either geographical or functional in nature, specifically described them as the "auxiliary and supplemental" restrictions customarily imposed by it in common motor carrier rail affiliate cases, and specifically imposed, among others, one of them, the geographical restriction that service was confined to points on the lines of PMT's rail parent, SP. Such geographical restriction was the one first adopted by the Commission in the earliest days of its regulation of motor carriers as the basic "auxiliary and supplemental" restriction to carry out the special statutory policy now contained in section 5(2)(b) of the Interstate Commerce Act with re-



spect to acquisition by railroad subsidiaries of motor carrier operations. It has consistently been considered as such ever since by the Commission, this court and Congress, and has been regularly included in grants of operating authority to rail affiliates even though the Commission in later cases has also included additional auxiliary and supplemental restrictions of a more functional nature. As a practical matter it is also evident that this restriction not only was a severe limitation on PMT but was also an "auxiliary and supplemental" restriction in the sense that it was imposed by the Commission merely to carry out the special policy applicable to rail subsidiary entry into motor carriage and not a mere limitation of the permit to the area for which there was a need for the service. Thus, it appears from the Commission's report that GM needed the service to off-rail points as much as to SP rail points, and that the restriction was intended for the special benefit of the independent trucker protestants to prevent PMT from serving areas which they were authorized to serve.

It is obvious from the Commission's decision that it carefully followed and applied to this contract carrier situation this court's recent decision in *American Trucking Associations, Inc. v. United States*, *supra*, which held that the policy regarding rail subsidiary entry into motor common carriage laid down in section 5 (2) (b) of the Interstate Commerce Act and the National Transportation Policy was not a rigid requirement and did not prevent the Commission from granting a certificate without auxiliary and supplemental restrictions where unusual conditions existed. Thus, because the Commission did not find the existence of "unusual conditions" generally, it imposed the above-mentioned auxiliary and supplemental restriction confining PMT service to points which were stations on the rail lines of SP.

The Commission declined to impose the other functional "auxiliary and supplemental" restrictions, not because of the existence of "special circumstances" or "unusual conditions" within the meaning of the *American Trucking Associations* case, but because such restrictions would have converted applicant into a common carrier with respect to such operations. Considered in context the District Court's decision cannot be regarded as holding to the contrary. The reasons why this conversion would have resulted are because under numerous Commission decisions coordinated rail-motor operations, which result where the additional functional auxiliary and supplemental restrictions are imposed, can only be accomplished by through routes and joint rates between the railroads and motor carriers, and under section 216(c) of the Interstate Commerce Act only common carriers and not contract carriers by motor vehicle are authorized to enter into through routes and joint rates with railroads. Since, under section 209(b) of the Interstate Commerce Act, both before and after the 1957 amendment, the Commission was authorized to impose only "reasonable terms, conditions and limitations, consistent with the character of the holder as a contract carrier," it was without power to impose the other functional auxiliary and supplemental restrictions sought by appellants, which were plainly inconsistent with PMT's contract carrier status.

It is evident too that the Commission had no power to adopt the other alternative suggested by appellants: grant a common carrier certificate, instead, to PMT with the additional functional auxiliary and supplemental restrictions attached. Under section 209(b) the Commission must grant a contract carrier permit if it appears, among other things, as the Commission found here, that the applicant is "fit, willing and able properly to perform the service of a con-

tract carrier by motor vehicle". In past cases only where it found that the sought contract carrier operations were, in fact, common carrier operations rather than contract carrier operations, which it specifically found not to be true, here, has the Commission issued a common carrier certificate in lieu of a contract carrier permit. Such limitation on the Commission's power is supported too by the fact that Congress in the pertinent Public Law 85-163 of 1957 added new section 212(c) of the Interstate Commerce Act permitting the Commission to convert outstanding contract carrier permits to common carrier certificates only where it finds that the operations do not conform to the definition of contract carrier operation and are, instead, those of a common carrier.

The language and legislative history of the 1957 amendment to section 209(b) clearly show that it did not establish any rigid rule that the Commission must, in contract carrier cases, attach all auxiliary and supplemental functional restrictions customarily attached in common carrier applications by motor carrier subsidiaries of railroads or adopt any more rigid rule than that applied as to such applications in the *American Trucking Associations* case. As originally introduced this legislation would have not only limited the definition of "contract carrier" but also sharply limited the power of the Commission to grant contract carrier permits in section 209(b) by providing that the Commission could not grant such a permit unless "existing common carriers are unwilling or unable to provide the type of service for which a need has been shown". Upon objections of the contract carrier industry that this was too restrictive the Commission and Congress agreed to eliminate this restriction and to substitute in section 209(b) the requirement that the Commission should consider certain prescribed criteria in determining whether issuance of a

permit would be consistent with the public interest and the National Transportation Policy. None of these specific criteria indicate that Congress intended to apply any peculiarly rigid restriction where railroad subsidiaries were contract carrier applicants. This is particularly significant in view of the facts: (1) that the Commission prior to this enactment had granted numerous unrestricted permits to PMT and other rail subsidiaries; (2) that the Commission's action in granting an unrestricted common carrier certificate to a rail subsidiary had been specifically affirmed by a three-judge federal district court (later affirmed by this court in the *American Trucking Associations* case); and (3) railroads had a much smaller share of the total intercity tonnage as compared to motor carriers than they did in 1935 and 1940 when Congress adopted the restrictive policy as to engaging in the trucking business by railroad subsidiaries, and were thus much less of a competitive threat to independent truckers if allowed through subsidiaries to enter contract motor carriage.

II. The Commission under the plain language of section 210 of the Interstate Commerce Act could not lawfully deny a contract motor carrier permit to a rail subsidiary merely because its parent was also a common carrier by railroad. That section, by its terms, prohibits, except as the Commission may authorize it, only dual operations by the same or an affiliated person as a common and a contract carrier by motor vehicle. Congress has never seen fit to include dual operations with railroads in this section since it was enacted in 1935, although the Commission first granted PMT contract carrier authority to serve certain SP rail points in 1944, and although Congress made other extensive changes in the regulation of contract carriers in 1957. To construe this section to prevent contract carriage by a rail subsidiary of the same commodities transported by

the parent as a railroad common carrier would, as a practical matter, almost completely bar rail subsidiary entry into motor contract carriage, since a railroad, unlike a motor common carrier, cannot lawfully waive the right to transport a single commodity as PMT was required to do here in order to obtain contract carrier authority. Congress has never given the slightest indication that it intended any such absolute bar. Such a construction would also deprive GM of the benefit of contract carrier service by PMT comparable to that enjoyed by its largest competitor through one of the contract carrier appellants. It is evident, however, that the Commission carefully scrutinized and considered PMT's relationship to SP in making the required statutory finding concerning the public interest and the National Transportation Policy under section 209(b) and that there are adequate subordinate findings supporting its conclusion that the authorized permit was consistent therewith.

The Commission's ultimate finding under section 210, that dual operations by PMT as a contract and common carrier by motor vehicle were consistent with the National Transportation Policy is rationally supported, in the light of the underlying anti-discrimination policy of section 210, by its action and subordinate findings for which there is evidentiary support, and are therefore binding on this court under settled law. Thus, it required PMT to waive all right to transport the involved commodities as a common carrier so that it could not transport the same commodities as a common and a contract carrier; found that its past service in a dual capacity had been without criticism; found, in effect, the possibility of discrimination would be negligible since it could serve but one shipper as a contract carrier; and guarded against the possibility of future discrimination by retaining the right to "reconsider this issue at any



future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference." It did not follow a policy in this railroad subsidiary case different from that applied in cases involving independent motor contract carriers, since there, as appellants themselves describe the latter cases, it is only where "the commodities to be transported by the common and contract carrier are wholly different, that the Commission has approved dual operations". Here, because of PMT's waiver of the right to transport automobiles and trucks as a common carrier, which was exacted by the Commission as an express condition to its granting of dual authority, the commodities were wholly different.

III. The majority of the court below properly held that appellants had no standing to sue. From the Commission's decision it is clear that while some of the appellant truck lines had authority to serve part of the involved territory, the restricted permit granted to PMT did not result in any injury to the appellants. Thus, the Commission found that the involved GM traffic was all moving by rail and would not in the future be handled by the appellant truckers regardless of whether the PMT application was granted; and that the granting of the permit would not result in any loss of traffic or competitive injury to the appellant truck lines but only in diversion of traffic from SP to PMT. The majority of the court found: "not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to institute this action." Such lack of injury is also to be inferred from the fact that appellants, after their request for a temporary

restraining order had been denied by the court, voluntarily withdrew their claim for an interlocutory injunction. Under this state of facts *Atchison, T. and S.F. Ry. v. United States*, 130 F. Supp. 76 (E.D. Mo. 1955), *aff'd per curiam*, 350 U.S. 892 (1955), is controlling authority that appellants had no standing to bring this action under section 205(g) of the Interstate Commerce Act and section 10 of the Administrative Procedure Act.

## ARGUMENT

### **I. The Commission's Action in Restricting PMT's Contract Carrier Operations to Points on the Rail Lines of Its Parent in the Absence of "Unusual Conditions", but in Refusing to Impose Other Functional "Auxiliary and Supplemental" Restrictions Is Thoroughly Consistent with This Court's Decisions and Applicable Provisions of the Interstate Commerce Act.**

#### **A. The Commission's Discussion Concerning Restrictions.**

Set forth below verbatim is the Commission's discussion concerning this question (R. 28-31):

"As seen, the proof in connection with each of the considered applications in our opinion justifies a grant of some authority. Protestants, however, in various pleadings and at oral argument contend that all four of the considered applications should be denied (1) because the proviso in section 5(2)(b)<sup>6</sup> must be read into section 209 and operates as a bar to the issuance of a contract carrier permit to an applicant railroad or an applicant railroad subsidiary, and (2) because the holding by applicant of the permits it seeks herein and its presently-held certificates would not be consistent with the public interest and the national transportation policy.

6. (Footnote 4 in Commission's decision) This provides that the Commission shall not authorize a railroad or its affiliate to acquire a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

"After careful study we are impelled to disagree. Our statutory authority to impose terms and conditions in permits issued under section 209 is derived from part (b) of that section, and not from section 5(2)(b). The rejection by the Commission of a similar contention with respect to section 207 in *Rock Island Motor Transit Co. Com. Car. Application*, 63 M.C.C. 91, 100, was sustained by the United States Supreme Court on December 9, 1957, in *American Trucking Associations Inc., et al. v. United States*, 355 U.S. 141, subsequent to the argument in these cases. Therein the Supreme Court held that the Congress did not intend the rigid requirement of section 5(2)(b) to be considered as a limitation on certificates issued under section 207 but added (pp. 151-152):

"... that the underlying policy of section 5(2)(b) must not be divorced from proceedings for new certificates under section 207. Indeed the Commission must take "cognizance" of the National Transportation Policy and apply the Act "as a whole". But for reasons we have stated we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a section 207 proceeding."

Although the Court, in that proceeding, was dealing only with applications for common carrier certificates, we think that undoubtedly the same principle applies here where contract carrier permits are sought and in reaching the conclusions above indicated, namely, that some authority should be granted in each proceeding, we have, in fact, given due consideration to the National Transportation Policy and to the principles which underlie section 5(2)(b).

"While we have power to impose restrictions in any permit granted authorizing motor contract carrier operations, such action is not required by either sec-

tion 5(2)(b) or the provisions of the National Transportation Policy; and it remains to be considered next whether any restrictions should be imposed here. The restrictions usually imposed in common carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point not a station on the railroad, (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail, (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service. However, if warranted by special circumstances, certificates have been issued without these restrictions to railroads or their affiliates, whether acquired by purchase as in *Louisville, N.A. & C.R. Co.—Purchase—Meerman*, 45 M.C.C. 6, and *Southern Pacific Company—Control; Pacific Motor Trucking Co.—Purchase—Lowinell Trucking Co.*, 60 M.C.C. 373, or as the result of an application filed under section 207, as in *Texas & Pacific Motor Transport Co., Ext.—Point Blue, La.*, 47 M.C.C. 25, *Burlington Truck Lines, Inc., Ext.—Iowa*, 48 M.C.C. 516, and *Rock Island Motor Transit Co. Com. Car. Application, supra*.

"It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 232 I.C.C. 683; *Willetts Co., of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M.C.C. 405; *Louisiana, A & T Ry. Co., Common Carrier Application*, 22 M.C.C. 213; *Hagerty Contract Carrier Application*, 26 M.C.C. 413, and *Siebert Extension—Woodbury and Elmer, N.J.*, 34 M.C.C. 340. In the two last-cited proceedings, the applicants sought permits to transport less-than-carload freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or supplemental of rail service. Since substituted service is common carriage at rail rates and on rail billing, all of the restrictions usually employed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings. On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted reserving to the Commission the right to



impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest. Nothing in *Scott Bros., Inc., Extension of Operations—Jersey City, supra*, or in the proceedings in which applicant herein obtained unrestricted contract-carrier authority, is inconsistent with the foregoing."

- B. Appellants' Major Premise That the Commission Granted "Unrestricted Authority" Is Patently Incorrect Since the Geographical Restriction of Service by a Rail Motor Carrier Subsidiary to Points on the Lines of Its Parent, Imposed Here, Has Been Considered by the Commission and This Court from the Very Outset of Motor Carrier Regulation and Consistently Thereafter as the Basic Restriction to Make Such an Applicant's Service "Auxiliary and Supplemental" to the Rail Service of Its Parent.**

The major premise in appellants' argument is that the Commission granted PMT "unrestricted authority" in so far as the usual restrictions to make operations of a railroad motor carrier subsidiary "auxiliary and supplemental" to the rail service of its parent are concerned. (Appellants' Brief, pp. 31-34). Assuming this to be true, appellants then argue that since under the pertinent provisions of the Interstate Commerce Act and the National Transportation Policy, as construed by this court in the *American Trucking Ass'n's* case, *supra*, unrestricted operations can be permitted in motor common carrier cases only where "unusual conditions" exist and that since "unusual conditions" did not exist here, therefore the Commission violated the statutory policy and that decision (Appellants' Brief, pp. 11-43).

This whole argument must fall for the basic reason that appellants' major premise is patently incorrect as the District Court properly recognized. Thus the court said (R. 83):

"\* \* \* The extended operations authorized, however—far from being 'unrestricted' operations by PMT in the contract carrier field, as the plaintiffs have consistently referred to them—were restricted in many

respects. The authority granted was limited to points already served by SP (so as not to affect adversely other railroads carrying GM traffic beyond SP to other rail points), and limited to points on the rail line of SP (so as not to cut in on territory which potentially might be served by independent motor carrier protestants), subject to the condition that 'the permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks' in its outstanding common carrier certificates (in the interest of avoiding the possibility of dual motor carrier operations), and the further condition 'that there may from time to time in the future be attached to the permits granted such reasonable terms, conditions and limitations as the public interest and national transportation policy may require.' "

Appellants' statement (App. Brief 32) "that both the majority and dissenting opinions clearly indicate that all members of the Commission understood that the authority issued was, in fact, unrestricted" is not only completely erroneous, so far as the majority was concerned, but is not even candid. Even a cursory reading of the majority opinion reveals that just the opposite was true and that the majority clearly felt that in restricting PMT's service geographically to points on the line of SP it was truly imposing a traditional "auxiliary and supplemental" restriction. Thus, as indicated above, *supra*, page 25, the Commission (R. 29-30) listed five numbered restrictions which it specifically described as, in the absence of "special circumstances", "the restrictions usually imposed in common carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supple-

mental of train service"; listed, among them, as (2), the restriction that "applicant shall not serve any point not a station on the railroad"; and specifically imposed that and one other important restriction here in the following language (R. 31):

"\* \* \* On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted reserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest.[<sup>7</sup>] Nothing in *Scott Bros., Inc., Extension of Operations—Jersey City, supra*, or in the proceedings in which applicant herein obtained unrestricted contract-carrier authority, is inconsistent with the foregoing."

7. This reservation of power was an ample remedy to deal with any destructive or unfair competition in case any should develop in the future. Thus, this court said of a similar reservation of power in *American Trucking Ass'ns v. United States, supra*, 355 U.S. at 154 (1957):

"If, as appellants fear, the unrestricted operations are destructive of competition or otherwise detrimental to the public interest, we believe the situation would not be without remedy. The Commission has retained jurisdiction 'to impose in the future whatever restrictions or conditions, if any, appear necessary in the public interest by reason of material changes in conditions or circumstances surrounding applicant's operations in relation to those of competing motor carriers.' 63 M.C.C., at 108. This reservation gives it continuing jurisdiction to make certain that the unlimited certificate issued here does not operate to defeat the National Transportation Policy."

Finally, since the Commission just above specifically distinguished this case from *Scott Bros., Inc., Extension of Operations—Jersey City*, 34 M.C.C. 163 (1942), and previous contract carrier grants to PMT, which generally did not contain the above geographical restriction and referred to the latter cases as granting "unrestricted contract authority", it is quite evident that the Commission considered the present grant not unrestricted.

This geographical restriction on motor carrier service by a rail subsidiary to points on the line of its parent was the one first adopted by the Commission in the earliest days of its regulation of motor carriers as the basic "auxiliary and supplemental" restriction to carry out the special statutory policy now contained in section 5(2)(b)\* of the Interstate Commerce Act, with respect to acquisitions by railroad subsidiaries of motor carrier operations. Thus, after referring to that policy, as originally contained in the Motor Carrier Act of 1935, the Commission in the very first volume of its decisions under that Act granted a certificate to a rail subsidiary authorizing service "confined to service auxiliary and supplemental to that performed by the Pennsylvania Railroad Company in its rail operations and in territory parallel and adjacent to its rail lines". *Pennsylvania Truck Lines, Inc.—Control—Barker*, 1 M.C.C. 101, 109-113 (1936). That the Commission intended

\* This provision states: "Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." It was originally enacted in substantially this form in section 213(a)(1) of the Motor Carrier Act of 1935 (49 Stat. 556) and was carried over into section 5(2)(b) by the Transportation Act of 1940 (54 Stat. 906).

by this "auxiliary and supplemental" restriction primarily to restrict rail subsidiary motor carriage to points on the lines of the parent railroad is further demonstrated from its supplemental decision in the *Barker* case (*Pennsylvania Truck Lines, Inc.,—Control—Barker M. Frt.*, 5 M.C.C. 9, 11-12 (1937) :

"The scope of the operations proposed to be retained is broader than intended by the conditions we stated in our prior report. Hence, it will be of advantage to the parties in this and later proceedings if we here amplify the meaning of those conditions. Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier.

*Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service."* (Emphasis added.)

This geographical restriction was uniformly and consistently imposed by the Commission as virtually the only "auxiliary and supplemental" restriction in a long line of cases thereafter, as the Commission pointed out in *Rock Island M. Transit Co.—Purchase—White Line M. Frt.*, 40 M.C.C. 457, 465 (1946) :

"From the date of the decision in the *Barker* case to shortly before enactment of The Transportation Act, 1940, the principles there recognized and applied, controlled the disposition of practically every rail-motor acquisition case. During the period indicated, approximately 40 of such cases were decided. In each of them approval of the proposed acquisition was made subject, except in unusual circumstances, to the con-



*dition that in operations under the acquired operating rights no service should be given to or from, or any traffic interchanged at any point not a station on the line of the acquiring railroad."* (Emphasis added.)

In 1938 in *Kansas City Southern Transport Co., Inc., Com. Car. Application*, 10 M.C.C. 221, 240-41, the Commission first added what may be described as the more exclusively functional "auxiliary and supplemental" restrictions and listed substantially the same five restrictions which are set forth in its instant decision. There, where the Commission later said its views first "ripened into a policy",<sup>9</sup> it is highly significant, however, that the Commission continued to include as restriction number (2) the same geographical restriction imposed here, confining the service to points on the lines of the rail parent.

The practice of including as one of the five "auxiliary and supplemental" restrictions, the pertinent geographical restriction has consistently been followed by the Commission ever since and has consistently been recognized and approved by this court. In *Willett Co. of Ind., Inc., Ert. Fort Wayne—Mackinaw City*, 42 M.C.C. 721, 727 (1943), the Commission attached these five auxiliary and supplemental restrictions, including the geographic one, and its action was upheld by this court in *Interstate Commerce Commission v. Parker*, 326 U.S. 60 (1945). In *Rock Island M. Transit Co.—Purchase—White Line M. Ert., supra*, 40 I.C.C. at 477<sup>3</sup> (1946) the Commission, where it previously had reserved the power in a certificate to impose "auxiliary

9. Those numbered (1), (3) and (5) in the present decision: auxiliary and supplemental service, movement on railroad bills of lading with prior or subsequent rail haul and retention of power to impose further auxiliary and supplemental restrictions.

10. *Rock Island Motor Transit Co., Com. Car. Applications*, 63 M.C.C. 91, 101 (1954).

and supplemental" restrictions but had not done so, amended the certificate to include the five specific auxiliary and supplemental restrictions, including the geographic one. Its action was again sustained by this court in *United States v. Rock Island Co.*, 340 U.S. 419 (1951), the court remarking at page 443:

"The Commission has expressed its policy to limit rail affiliates to services in aid of rail transportation by the phrase, perhaps too summary, auxiliary and supplemental. Though the phrase is difficult to define precisely, its general content is set out in *Texas & Pacific Motor Transport Co. Application*, 41 M.C.C. 721, 726, quoted n. 19, *supra*.<sup>[11]</sup> While the practice of the Commission has varied in the conditions imposed, the purpose to have rail-connected motor carriers act in coordination with train service has not. Circumstances change. Different conditions are required under different circumstances to maintain the balance between rail and motor carriage. We do not think the meaning of auxiliary and supplemental is limited to the Commission's practice at any particular time. So long as it may fairly be said that the practice required from the motor carrier falls within the meaning the Commission has given to auxiliary and supplemental, the condition is valid."

Finally, in *Rock Island Motor Transit Co. Com. Car. Application*, 63 M.C.C. 91, 108-109 (1954), the Commission removed all of the restrictions, including the geographical one which it had previously imposed on the involved rail subsidiary in its earlier *Rock Island* case, *supra*, as an

11. The geographical restriction was also included among the "auxiliary and supplemental" restrictions in the cited case, *Texas & Pac. Motor Transport Co. Application*, 41 M.C.C. 721, 723, 726 (1943). It was also included in a subsequent decision involving this carrier *Texas & Pac. Motor Transport Co. Com. Car. Application*, 47 M.C.C. 753 (1948), which was affirmed by this court in *United States v. Texas & Pac. Co.*, 340 U.S. 450 (1951).

exception to the usual policy "justified by the evidence in that proceeding". Again this court affirmed, sustaining the Commission's power to grant what it described as "unrestricted operations", so far as "auxiliary and supplemental" restrictions were concerned where "special circumstances" prevailed. *American Trucking Ass'ns v. United States*, *supra*, 355 U.S. at 149, 152. There is a marked contrast between the situation involved in that case, where the Commission did not impose the previously included geographical restriction, and which could thus properly be described as involving "unrestricted operations", and that here where the geographic restriction was specifically imposed.

Congress also must be deemed to have considered the geographic restriction as one of the usual "auxiliary and supplemental" restrictions generally applied by the Commission in this type case and to have approved that course. Thus, in the Transportation Act of 1940 (54 Stat. 906), it reenacted, as section 5(2)(b) of the Interstate Commerce Act, the peculiar restrictions applicable to railroad subsidiaries which had been contained in section 213(a) of the Motor Carrier Act of 1935 (49 Stat. 556). Such action has been considered by this court as denoting congressional approval of the long-standing administrative practice in both the *Rock Island* (340 U.S. at 432) and the *American Trucking Ass'ns* cases (355 U.S. at 150), the court remarking in the former case that some of the Commission's decisions (including the *Kansas City Southern Transport* case, *supra*, where the geographic restriction was specifically included) "were specifically called to Congress' attention prior to the enactment of the 1940 Act".

As a practical matter it is evident that the geographical restriction was a severe limitation on the authority sought here since the Sub 37 application requested blanket authority to serve all points in the seven-state area, including

three states, Montana, Idaho and Washington in which SP did not even operate. As a practical matter, too, it is evident that no restriction could be more basically designed to make motor service "auxiliary and supplemental" to rail service as one confining the truck service to rail points. Considering also the basic spirit behind the statutory rail restrictions in section 5(2)(b), that of preventing monopolization by railroads of motor carriage,<sup>12</sup> it is plain that this geographic restriction was "auxiliary and supplemental" in the sense that it was included not for the benefit of the shipper but for the protection of motor carriers and thus in furtherance of the basic spirit of the statute. There was as much if not more evidence of need for this service by GM to off-rail points as to those on rail, the Commission remarking (R. 22) as to the Sub 37 application: "The proposed service is supported by General Motors in order to obtain . . . direct deliveries to dealers at off-rail points." Clearly the Commission in imposing this geographical restriction had in mind not only the protection of the connecting rail line protestants, but also more especially the protection of the independent motor carriers, as its decision shows. (See portion of the decision (R. 31) quoted above, page 29.) Certainly this restriction, as a practical matter, was more plainly for the protection of the motor carriers

12. This court said of that statutory policy in *United States v. Rock Island Co.*, *supra*, 340 U.S. at 432:

"Such limitation was in furtherance of the National Transportation Policy, for otherwise the resources of railroads might soon make over-the-road truck competition impossible, as unregulated truck transport, it was feared, might have crippled some railroads. Motor transportation then would be an adjunct to rail transportation, and hoped-for advancements in land transportation from supervised competition between motors and rails would not materialize. The control of the bulk of rail and motor transportation would be concentrated in one type of operation."

than for that of the protesting railroads. Thus the protesting railroads did not even operate in two of the involved states served by SP (Arizona and New Mexico), and the connecting protestant railroads would have been adequately protected if the Commission had adopted only the less severe restriction advocated by Commissioner Freas in his concurring opinion (R. 35), that service should have been excluded only to points "which are stations on the lines of the connecting rail carriers of Southern Pacific Company, but not stations on the lines of the latter, \* \* \*."

- C. The Commission Specifically Followed the American Trucking Ass'n's Case and Congressional Policy, Attaching the Geographical "Auxiliary and Supplemental" Restriction Because of the Absence of "Unusual Conditions". Its Refusal to Attach Other Functional "Auxiliary and Supplemental" Restrictions Was Not Because of "Unusual Conditions" but Because They Would Have Converted Applicant Into a Common Carrier as to These Operations and Were Thus Beyond Its Power to Impose Under Section 209(b). The District Court Did Not Sustain the Commission's Refusal to Attach Such Conditions Because It Found "Unusual Conditions" or "Special Circumstances" to Exist.**

It is clear from the portion of the Commission's decision (R. 28-31) quoted in A above (*supra*, pp. 23-27) that the Commission carefully followed and applied to this contract carrier situation the same policy enunciated in this court's recent decision in *American Trucking Ass'n's* case, which held that the policy regarding rail subsidiary entry into motor common carriage laid down in section 5(2)(b) of the Interstate Commerce Act and the National Transportation Policy was not a rigid requirement and did not prevent the Commission from granting a certificate without auxiliary and supplemental restrictions where unusual conditions existed. The portion of the decision quoted above plainly establishes that it was due to the holding in that case that the Commission specifically imposed the restriction confining PMT service to SP rail points "in the absence of any showing of unusual conditions in these



proceedings" (R. 31 *supra*, p. 26). In other words, since the "unusual conditions" or "special circumstances" found to justify departure from the usual auxiliary and supplemental restrictions in the *American Trucking Ass'n's* case were not found to exist here (with one exception), the Commission, in compliance with that case here refused to depart from the usual policy and in accordance with that policy attached (with one exception) the geographic "auxiliary and supplemental" restriction. The one exception, where the record shows that "special circumstances" did exist,<sup>13</sup> was the authorization of service in the Sub 35 proceeding from Oakland, California, to Austin, Tonopah and Yerington, Nevada, points not on SP lines.

Appellants, however, contend that since the record does not establish the existence of "special circumstances" or "unusual conditions", the Commission improperly departed from applicable policy, as defined in the *American Trucking Ass'n's* case, in refusing to apply other "auxiliary and supplemental" restrictions of a more functional nature, customarily employed in rail subsidiary motor common carrier cases. The Commission listed these restrictions as follows (R. 29-30):

"(1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, \* \* \* (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a

13. Thus, these destination points were not on the lines of any railroad (plaintiffs' Exhibit 2 before the District Court, p. 74 of transcript of hearing before the Commission in the Sub 35 case, which is part of the transcript of record before this court, R. 90, but was not printed) and none of the appellant motor carriers had authority to serve these points (R.24-26) or protested this application (R. 11).

through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail, \* \* \* and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to or supplemental of, ~~train~~ service."

The short answer to this contention is that such refusal was based, not on the supposed existence of "unusual conditions" or "special circumstances", which it specifically found was generally not the case here, but solely on the fact that it had no power to impose such restrictions in a contract carrier permit issued pursuant to section 209(b) because this would convert the applicant into a common carrier. This is indicated plainly in the Commission's decision as follows (R. 30-31):

"It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 232 I.C.C. 683; *Willett Co., of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M.C.C. 405; *Louisiana, A & T Ry. Co., Common Carrier Application*, 22 M.C.C. 213; *Hagerty Contract Carrier Application*, 26 M.C.C. 413, and *Siebert Extension—Woodburn and Elmer, N. J.*, 34 M.C.C. 340. In the two last-cited proceedings, the applicants sought permits to transport less-than-carload freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or supplemental of rail service. Since substituted service is common carriage at rail rates and on rail billing, all of the restrictions usually employed to apply to sub-

stituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings."

Appellants' assertions (Appellants' Brief, pp. 36-41) that the District Court sustained the Commission's action in this respect on other than the above grounds by improperly substituting its judgment for that of the Commission and finding, contrary to the Commission's finding, that "special circumstances" existed, are completely without basis. Reliance is placed on the following excerpt from the District Court's decision (R. 81):

"\* \* \* although the Commission found an absence of unusual conditions which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM."

It is extremely unlikely that the court would have followed the course which appellants charge it with having followed since none of the appellees in their oral or written argument before the court sought to sustain the Commission's decision on the ground that there were "special circumstances" within the meaning of the *American Trucking Ass'n's* case. Read in context, it is manifest that the phrase "special circumstances" was not used in the sense employed in the *American Trucking Ass'n's* case. Instead, since this excerpt appears at the end of a paragraph in which the court was summarizing (R. 80) "the effect denial of the permit would have upon the applicant and the shipper and the changing character of the shipper's requirements", one of the specific criteria which amended section 209(b)

made it the Commission's duty to consider, it is evident that this was merely a short-hand way of saying that the Commission had duly observed that requirement. That the court did not intend to justify the Commission's action in withholding these functional "auxiliary and supplemental" restrictions on the ground that "special circumstances" existed instead of on the ground that it would convert PMT into a common carrier, is also clearly demonstrated in its following statement (R. 81) in the immediately following portion of its opinion dealing specifically with appellants' contentions regarding the restrictions:

" \* \* \* The Commission points out further that to apply to a § 209(b) contract carrier permit the five restrictions generally placed upon a § 207 common carrier certificate in the case of a motor carrier subsidiary of a railroad, would convert the contract carrier into a common carrier. \* \* \*"

The reason why the imposition of these particular restrictions must necessarily have converted these operations of PMT into common carrier operations is quite apparent from the Commission's decision in *Willett Co. of Indiana, Inc., Extension—Ill., Ind., and Ky.*, 21 M.C.C. 405, 409 (1940), one of the cases cited in this connection in the present report. There the Commission observed that co-ordinated rail-motor service, that which results when, as in that case, the functional auxiliary and supplemental restrictions are imposed, "could only be accomplished through the medium of through routes and joint rates. \* \* \*"  
Under section 216(c) (49 U.S.C. § 316(c))<sup>14</sup> of the Inter-

14. This section provides:

"(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; \* \* \*"

state Commerce Act only through routes and joint rates between railroads and common carriers by motor vehicle are authorized. There is no provision authorizing such between railroads and contract carriers. Appellants' argument thus leads to the absurd result that they would have the Commission attach restrictions commanding SP and PMT to do that which they cannot lawfully do under section 216(c) unless PMT be considered a common carrier as to these operations.

Under the clear language of section 209(b) of the Interstate Commerce Act the Commission had no power to impose restrictions which would have converted these operations from contract carrier to common carrier operations. Thus, both before and after that section was amended by Public Law 85-163, enacted on August 22, 1957 (71 Stat. 411), it provided that the Commission shall attach to the permit "reasonable terms, conditions and limitations consistent with the character of the holder as a contract carrier." This power to impose contract carrier restrictions is much more limited than in the case of common carriers.<sup>15</sup> Any requirement which might be read into the broad and general terms of the National Transportation Policy, that the Commission must attach these particular auxiliary and supplemental restrictions in a particular case must yield to the more specific requirement of section 209(b) that it cannot attach restrictions which are inconsistent with the status of the applicant as a contract carrier. Finally, considering that Congress retained the above language in the amended version of section 209(b) adopted in 1957, and considering that the primary purpose of such amended

15. The comparable provision as to common carrier certificates, § 208(a) (49 U.S.C. § 308(a)), authorizes the Commission to attach "reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require. • • •"



act (as appellants recognize, Appellants' Brief, p. 41), was to "make readily possible clearer distinctions than now exist between motor common and contract carriers" (S. Rep. 703, 85th Cong. 1st Sess., p. 3 (1957)), it would indeed be ironical if the Commission were to be held to have power to impose restrictions which would tend to eliminate distinctions *between common and contract carriers*.

It is evident, too, that the Commission had no power to adopt the other alternative suggested by appellants (Appellants' Brief, pp. 30-31): grant a common carrier certificate, instead, to PMT with the additional functional auxiliary and supplemental restrictions attached. Under 209(b) the Commission must grant a contract carrier permit if it appears, among other things, as the Commission found here, that the applicant is "fit, willing and able properly to perform the service of a contract carrier by motor vehicle". In past cases, including those upon which appellants rely (Appellants' Brief, p. 30), only where it found that the sought contract carrier operations were, in fact, common carrier operations rather than contract carrier operations, which it specifically found not to be true here, has the Commission issued a common carrier certificate in lieu of a contract carrier permit. Such limitation on the Commission's power is supported too by the fact that Congress in the pertinent Public Law 85-163 of 1957 (71 Stat. 411) added new section 212(c)<sup>16</sup> of the Interstate Commerce

16. This section provides:

"The Commission shall examine each outstanding permit and may within one hundred and eighty days after the date this subsection takes effect institute a proceeding either upon its own initiative, or upon application of a permit holder actually in operation or upon complaint of an interested party, and after notice and hearing revoke a permit and issue in lieu thereof a certificate of public convenience and necessity, if it finds, first, that any person holding a permit whose operations on the date this subsection takes effect do not conform with

Act permitting the Commission only to convert outstanding contract carrier permits to common carrier certificates where it finds that the operations do not conform to the definition of contract carrier operation and are, instead, those of a common carrier.

**D. The Language and Legislative History of the 1957 Amendments to Section 209(b) Confirm That Congress Did Not Intend Any Rigid Rule That the Commission Must Attach All Functional "Auxiliary and Supplemental" Restrictions in Contract Motor Carrier Permits Issued to Rail Subsidiaries or Adopt Any More Rigid Rule Than That Applied as to Common Carrier Certificates Issued to Such Subsidiaries Under the American Trucking Associations Case.**

Appellants contention (Appellants' Brief p. 41) that the August 22, 1957, amendment to section 209(b) contained in Public Law 85-163 (71 Stat. 411) "has no bearing on the issues here" is completely without merit. Since the amendment was enacted while this case was pending before the Commission and before the oral argument and decision the Commission under settled law, and as it did, was required to apply the statute as amended. *Ziffirin, Inc. v. United States*, 318 U.S. 73 (1943).

Both the terms and legislative history of this enactment confirm that Congress did not intend thereby to establish any rigid rule that the Commission must in contract carrier cases involving rail subsidiaries attach all auxiliary and supplemental functional restrictions customarily attached in common carrier applications by such subsidiaries or adopt any more rigid rule than that applied as to such com-

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the definition of a contract carrier in section 203(a)(15) as in force on and after the date this subsection takes effect; second, are those of a common carrier; and, third, are otherwise lawful. Such certificate so issued shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit."

mon carrier applications in the *American Trucking Associations* case.

It is true, as appellants assert (Appellants' Brief p. 41) that one purpose of S. 1384 (85th Congress, 1st Session), which was later adopted as Public Law 85-163, was to limit the number of contracts a contract carrier might hold by restricting the definition of "contract carrier" and to overturn this court's decision in *United States v. Contract Steel Carriers*, 350 U.S. 409 (1956), which permitted them to expand indefinitely (S. Rep. 703, 85th Cong., 1st Sess. (pp. 2, 3). But also, as originally introduced, the bill would have provided for a sharp restriction on the Commission's power to grant contract carrier permits under section 209(b). As the Senate Committee explained it at page 3 of the above report:

"A further change would be effected whereby that portion of section 209(b) (49 U.S.C. 309(b)) relating to the issuance of a contract carrier permit would include a provision that a permit would be issued when it appears, *inter alia*, *'that existing common carriers are unwilling or unable to provide the type of service for which a need has been shown.'*" (Emphasis added.)

It appears, however, from the above Senate Report that because of objections of the Contract Carrier Conference of the American Trucking Associations, one of the appellants in this case, that this amendment to section 209(b) would unduly restrict contract carriers, the Interstate Commerce Commission agreed before the Senate Committee to its elimination. This is shown from the following excerpts from S. Rep. 703, *supra* (pp. 4-5):

"However, the Commission, upon reflection, on the objections of contract and private carriers to the bill, concluded that in some respects S. 1384 would provide

too rigid a pattern. It decided that the proposed requirement in section 209(b) that additional permits could be issued only upon a showing that existing common carriers are unwilling or unable to render the required types of service should be withdrawn. \* \* \*

"Opposing the bill were contract motor carriers as represented by spokesmen for the Contract Carriers Conference of American Trucking Associations, and its members, and certain supporting shippers. \* \* \*

Amendment of the law requiring contract applicants to establish that common carriers are unwilling or unable to furnish the service would, it was urged, put to an end the extension of contract carrier service. \* \* \*

Obviously, the Senate Committee was convinced as to the correctness of these views. Thus, it stated (S. Rep. 703, *supra* at 3):

"\* \* \* The committee is of the opinion, however, that, as originally introduced, S. 1384 would be unduly restrictive on contract carriage. Accordingly, the committee recommends a number of amendments to the bill."

This is indicated, too, by the fact that, in reporting out the bill which was thereafter enacted without change, the Senate Committee amended the bill by eliminating the above amendment to section 209(b) and in substituting the following new sentence in that section (S. Rep. 703, *supra*, 8):

"\* \* \* In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service pro-

posed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

This is a clear indication that Congress did not intend generally by this Act that the Commission should adopt an unduly restrictive attitude toward contract carrier applications.

We turn now to the situation regarding restrictions upon railroad subsidiary entry into motor carriage which faced Congress at the time of the adoption of this amendment. It is highly significant that at such time not only was the present proceeding pending before the Commission, but there had been these developments: (1) the Commission's decision in the *Rock Island Motor Transit Co. Com. Car. Application*, *supra*, that it had power under applicable legislative policies where special circumstances existed to grant completely unrestricted common carrier motor certificates to rail subsidiaries had been sustained by a three-judge court (*American Trucking Associations v. United States*, 144 F. Supp. 365 (D.C. D.C. 1956)), and was on appeal to this court, (2) the Commission had already granted contract carrier permits without functional "auxiliary and supplemental" restrictions to a subsidiary of the Pennsylvania Railroad (*Scott Bros., Inc., Extension of Operations—Jersey City*, *supra*), and on several occasions had previously approved, without such restrictions, contract carrier permits to PMT (*Pacific Motor Trucking Co., Extension of Operations—Automobiles*, 42 M.C.C. 911 (1948); *Pacific Motor Trucking Co., Extension—New Automobiles, Trucks, and Busses, Los Angeles to San Ysidro and Calexico*, 51 M.C.C. 860 (1950); *Pacific Motor Trucking Co., Extension—Raymer to Los*



*Angeles Harbor*, 51 M.C.C. 861 (1950); *Pacific Motor Trucking Co., Extension—Carson City and Minden, Nev.*, 63 M.C.C. 851 (1955); and original decision of May 8, 1957 (R. 54), of the entire Commission in the Sub 34 proceedings involved herein); (3) the basic reason for enactment of specific restrictions upon rail entry into motor carriage, fear of monopolization by the rails of motor carriage,<sup>17</sup> which prompted enactment of such restrictions as to common motor carriage in 1935 and 1940, no longer existed in any where near the degree prevailing at that time, ~~inasmuch as the railroads were in 1957.~~

In this posture Congress enacted the 1957 amendment, specifically listing the various criteria which the Commission should consider in determining "whether issuance of a permit will be consistent with the public interest and the National Transportation Policy." It is highly significant that Congress chose not to say specifically that permits could not be granted to railroad subsidiaries; that it did not specifically insert the specific limited restrictive language applicable to them of section 5(2)(b) (see footnote 6, p. 23, *supra*); and that it did not specifically mention the particular element in the National Transportation Policy requiring the Commission "to recognize and preserve the inherent advantages of each" form of transportation, which element had been the basis for the Commission's action, approved by this court, in imposing such restrictions as it had traditionally imposed in applications by rail subsidiaries for new motor common carrier certificates, as compared with applications by them to acquire existing motor carrier facilities. *Rock Island M. Transit Co., Purchase—White Line M. Frt.*, *supra*, 40 M.C.C. at 461-62.

17. *United States v. Rock Island Motor Co.*, *supra*, 340 U.S. at 432, quoted in footnote 12, *supra*.

473; *United States v. Rock Island Motor Transit Co.*, *supra*, 340 U.S. at 427, 433. In the light of all these circumstances certainly the doctrine of *expressio unius est exclusio alterius* is applicable here and is compelling proof that Congress intended no rigidly restrictive policy to be employed in connection with entry by a rail subsidiary into contract carrier by motor vehicle operations and did intend one no more restrictive, at least, than had been theretofore followed as to entry by such subsidiaries into common carrier by motor vehicle operations, as contemplated in the *American Trucking Associations* case.

In conclusion on this point it may be said that appellants are in the unsound position of asking this court and the Commission to apply what amounts to a more restrictive policy to rail subsidiary entry into contract carriage than that traditionally applied as to such entry into common carriage, when Congress has specifically not done so and when it is even now considering whether the present statutory restrictions on railroad subsidiary motor common carriage are too severe in the light of present competitive conditions. Thus, several bills<sup>18</sup> were introduced in 1959 before the present Congress, on some of which hearings have recently been held, to eliminate all special restrictions on railroad subsidiary entry into motor carriage, and the Senate in 1959 adopted a resolution providing for study of various unsolved serious transportation problems, including "the subject of the ownership of one form of transportation by another" (S. Res. 29, 86th Cong., 1st Sess.).

18. H.R. 7960, H.R. 9280, S. 1353 (86th Cong., 1st Sess.).

**II. The Commission Thoroughly Considered, in the Light of Section 210 of the Interstate Commerce Act, the Propriety of Granting a Contract Carrier Permit to PMT in View of the Fact That Its Parent Was a Common Carrier by Railroad in the Same Area and in View of the Fact That It Also Operated as a Common Carrier by Motor Vehicle. Its Ultimate Finding Under That Section That This Was Permissible is Consistent with the Spirit of That Section as Well as Previous Commission Decisions. It is Rationally Supported by the Commission's Action in Requiring PMT to Waive the Right to Transport Automobiles and Trucks as a Common Carrier, by Its Retention of Jurisdiction and by Its Subordinate Findings for Which There is Substantial Support. It is Therefore Binding on This Court.**

**A. The Commission's Discussion with Respect to Dual Operations.**

Section 210 of the Interstate Commerce Act, so far as pertinent, provides:

"Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act

"(2) no person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory."

The Commission in both of its decisions made the required ultimate finding under section 210 that the holding of dual operating rights by PMT as a common and contract carrier by motor vehicle was consistent with the public

interest and the National Transportation Policy (R. 33, 60).

In its prior report the Commission said in support of its ultimate finding (R. 58-60):

"There remains the question of the propriety of granting applicant a permit authorizing operations of the scope indicated above while, at the same time, it also holds a certificate authorizing common-carrier operations in the same territory. Further, there is also a question as to whether we should grant such a permit in view of the extensive common carrier rail service now provided in the territory by applicant's parent corporation, the Southern Pacific Company. True, the provisions of section 210 of the act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle, but even without the statutory requirements, we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed.

"Insofar as concerns dual operations by applicant as a common carrier and as a contract carrier by motor vehicle, the contract-carrier operations here considered are not competitive with the common-carrier operations now conducted or authorized. Most of the common-carrier authority held by applicant is restricted against the transportation of automobiles and trucks, either specifically, or in the form of a restriction against the transportation of commodities requiring special equipment. The latter restriction would not preclude the movement of a single car or truck on a unit of conventional equipment, but that type of movement is not practicable for an operation of the nature here

considered, and the restriction operates as a bar to the use of the specialized equipment here contemplated to be used. Actually, applicant has never transported an automobile or a truck under its common-carrier authority, and it expresses a willingness to have any appropriate limitation imposed upon such authority to prevent it from so doing. Although the common-carrier and contract-carrier operations are not competitive, the granting of authority which would permit applicant to serve the same shipper, either at the same plant or at any other point, both as a contract carrier of automobiles and trucks and as a common carrier of general freight, nevertheless requires careful scrutiny and special justification. The relationship between applicant and the railroad clearly opens the door for violation of the principles underlying section 210, even though not specifically covered by the statute. The granting of the instant application would permit the Southern Pacific Company to serve the same shipper, General Motors, both as a contract carrier by motor vehicle and as a common carrier both by rail and motor of general freight. \* \* \*

In other respects, however, we agree with applicant, Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations. \* \* \*



In support of this ultimate finding the Commission in its final decision discussed the matter at length as follows (R. 31-32), setting forth its subordinate findings and adopting those made in its earlier report as follows:

#### "DUAL OPERATIONS

"The prior report in the Sub 34 proceeding fully discusses the dual operation question and needs little enlargement or repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted. Another wholly-owned motor carrier subsidiary of Southern Pacific, Southern Pacific Transport Company,<sup>19</sup> holds certificates in No. MC-30319 and various sub-numbers thereto authorizing substituted motor-for-rail service auxiliary to or supplemental of the rail operations of Southern Pacific and those of an affiliated rail line, Texas & New Orleans Railroad Company, generally over regular routes between specified points in Texas and Louisiana. The additional dual operations occasioned by the grants of contract-carrier authority herein would not be such an aggravation of the existing dual operations of applicant or between applicant and the commonly controlled Texas subsidiary as to require disapproval. Compare *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M.C.C. 473, 479, and *Complete Auto Transit, Inc.,—Extension, Willow Run*, 71 M.C.C. 383, 388.

"As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier

19. Another motor-carrier subsidiary of Southern Pacific Company. Technically, the Commission was not required to consider the operations of this company, since it does not operate "over the same route or within the same territory" as BMT, within the meaning of section 210. The fact that it did so is another indication of the thorough consideration which it gave to the dual operations issue.

by rail. In the 54-page consolidated certificate issued to applicant in No. MC 78786, dated July 27, 1956, the 32 different commodity descriptions grouped together under an alphabetical key on sheets 37 through 39 include the descriptions 'general commodities, except \* \* \* assembled automobiles' in descriptions F, K, L, Z-1, and Z-6, and 'general commodities' with no exceptions referring to assembled automobiles and trucks in descriptions D, H, J, N, S, T, U, Y, Z, and Z-3. Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks, and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date, should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference."

- B. The Commission Could Not Lawfully Deny a Contract Motor Carrier Permit to a Railroad Subsidiary Under Section 210 Merely Because Its Parent Was a Common Carrier by Railroad Serving the Same Shipper. To the Extent That It Could Take This Factor Into Consideration in Making the Required Finding as to Consistency with the Public Interest in the National Transportation Policy Under Section 209(b), It Clearly Did So, and Its Conclusions That the Authorized Permit Was Consistent Therewith Are Supported by Adequate Subordinate Findings.**

The Commission under the plain language of section 210 of the Interstate Commerce Act can not lawfully deny a

contract motor carrier permit to a rail subsidiary merely because its parent was also a common carrier by railroad operating in the same territory and serving the same shipper. That section, by its terms, prohibits, except as the Commission may authorize it, only dual operations by the same or an affiliated person as a common and a contract carrier by motor vehicle. Congress has never seen fit to include dual operations with railroads in this section since it was enacted in 1935, although the Commission first granted PMT contract carrier authority to serve GM at certain SP rail points in 1944,<sup>20</sup> and although Congress made other extensive changes in the regulation of contract carriers in the 1957 amendment. To construe this section to prevent contract carriage by a rail subsidiary of the same commodities transported by the parent as a railroad common carrier would, as a practical matter, almost completely bar rail entry into motor contract carriage since a railroad, unlike a motor common carrier, can not lawfully waive the right to transport a single commodity<sup>21</sup> as PMT was required to do here in order to obtain contract carrier authority. Congress has never seen fit to provide that railroad subsidiaries can not engage in motor contract carriage. Even though section 210 thus does not apply, so far as dual operations by railroads are concerned, the fear expressed by appellants (Appellants' Brief, p. 28) that the Commission will be able to issue a myriad of contract carrier permits to railroads or their subsidiaries "just

20. The Commission granted PMT contract carrier authority to serve GM between Oakland, California, and Nevada rail points on the lines of SP in 1944 (R. 71).

21. Section 1(4) of the Interstate Commerce Act (49 U.S.C. § 1(4)) makes it "the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor. There is no comparable duty enjoined upon motor carriers in the Interstate Commerce Act.

for the asking" is hollow indeed. Not only must a railroad subsidiary seeking a contract carrier permit bear the usual burden of proof as to public interest and the National Transportation Policy under section 209(b) but it is also subject to at least some of the usual "auxiliary and supplemental" restrictions such as were imposed in this case.

It is to be noted too that to apply section 210 as an absolute bar to dual rail and motor carrier operations when it is not even an absolute bar to dual motor and common contract carrier operations would also deprive GM of the benefit of contract carrier service by PMT comparable to that enjoyed by its largest competitor through one of the contract carrier appellants. Thus, it appears that Hadley Auto Transport, one of the appellants here, performs contract carrier service for Ford Motor Company which is a principal competitor of GM (R. 20, 80).

It is evident, however, from the Commission's specific discussion of the matter set forth above (pp. 50-53) that it carefully scrutinized and considered PMT's relationship to SP in making the required statutory finding concerning the public interest and the National Transportation Policy under section 209(b). Thus it said (R. 58): "We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed."

The policy behind section 210, which policy the Commission considered in relation to the SP-PMT affiliation, in connection with section 209(b), is to prevent a carrier operating in both a common and contract capacity from discriminating between its shippers by charging some the regular published, common carrier rates and charging

others reduced contract carrier rates. *Scott Bros., Inc., Contract Carrier Application*, 32 M.C.C. 254; 256 (1942). In the light of this policy it is plain that there are adequate subordinate findings rationally supporting the Commission's conclusion that granting of a permit to PMT would be consistent with the public interest and the National Transportation Policy under section 209(b) despite its affiliation with SP. Thus, the Commission found in its earlier report, which findings were incorporated in its later report by reference (R. 60, 31), that in effect the possibility of discrimination was slight since PMT was to serve but a single shipper as a contract carrier and that "applicant's past satisfactory service in a dual capacity had been without criticism". Furthermore, the Commission retained jurisdiction over this whole matter, declaring (R. 32): "However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference".

**C. The Commission's Ultimate Finding Under Section 210 That Dual Contract and Common Carrier Operations by PMT Were Consistent with the Public Interest and National Transportation Policy is Rationally Supported by the Commission's Subordinate Findings, for Which There is Evidentiary Support, and by the Commission's Action in Requiring PMT to Waive All Right to Transport Automobiles and Trucks as a Common Carrier and in Retaining Jurisdiction to Prevent Future Discrimination or Preference, and the Decision is Consistent with its Decisions in Previous Cases. It is Therefore Conclusive Upon This Court.**

The determination which the Commission is required to make under section 210 is merely another of the numerous determinations which Congress has trusted to the Commission's expert judgment and discretion. As in the



case of such other determinations, it is settled that the Commission's determinations under section 210 are binding upon the courts if rationally supported by adequate findings for which there is substantial support in the evidence. *Fine & Jackson Trucking Corp. v. United States*, 65 F. Supp. 443 (D. N. J. 1946); *Ziffrin, Inc. v. United States*, *supra*, 318 U.S. at 80. Certainly, as indicated below, such is plainly the situation here.

Considering the anti-discrimination policy behind section 210, as described above, the Commission's findings and action here rationally support the conclusion that there would be no possibility of discrimination in the present situation, and thus support its ultimate findings that the holding of dual operating rights by PMT as a common and contract carrier was consistent with the public interest and the National Transportation Policy. Thus, as we have seen, the Commission found in the prior report in the Sub 34 proceedings (R. 60), which findings were incorporated by reference in the final decision, that, in effect, the possibility of discrimination was minimal since PMT would serve but a single shipper as a contract carrier, and that PMT's past performance in a dual capacity had been satisfactory and without criticism, for which findings there was ample evidentiary support.<sup>22</sup> These findings were pertinent both to the dual rail-motor and dual motor common and contract carrier operations. Furthermore, to forestall any possibility of discrimination the Commission required PMT to waive specifically any rights it might have to transport as a common carrier, automobiles and trucks, the only

22. See testimony of Oliver Etzel, Executive Assistant of PMT (R. 104-105) set forth in Appendix B, page 1, hereto, that there never had been any charges of discrimination against PMT in connection with its existing dual operations in either interstate or intrastate commerce.

commodities which it was herein authorized to transport as a contract carrier, even though it had not been transporting them as a common carrier, which condition PMT complied with in order to obtain its permit. Finally, the Commission, as indicated above, even guarded against the possibility of any future discrimination by providing (R. 32) that it retained the right to "reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference".

It is self-evident from appellants' own brief that the Commission's action here is thoroughly consistent with its decisions in prior cases involving the dual operations question and that appellants' contention (Appellants' Brief, p. 50) that the Commission "imposes one, strict standard of proof, when independent carriers are involved and another, far easier standard, when the applicant happens to be a rail affiliate" is without substance. Thus, appellants in describing the previous decisions state (Appellants' Brief, p. 47):

"It is only in those instances where the services performed as a common and contract carrier are not competitive or where the commodities to be transported by the common and contract carrier are wholly different, that the Commission has approved dual operations."

and they cite (Appellants' Brief, p. 45) the Commission's decision in *Ziffrin, Inc., Contract Carrier Application*, 28 M.C.C. 683, 698 (1941), where the Commission said:

"The discrimination which the section is intended to obviate is always present when the same persons are able to offer both kinds of service in respect of the same commodities and between the same points."

Here, since the Commission required PMT to waive in writing all right to transport automobiles and trucks in its outstanding common carrier certificates, which commodities were the only ones it was herein authorized to transport as a contract carrier, it is obvious that the Commission did not authorize PMT "to offer both kinds of service in respect of the same commodities".

Nor is there any inconsistency between the action of the entire Commission here and that of two of its divisions in *Miller Transport Co., Inc.—Purchase—Storch Trucking Co.*, 57 M.C.C. 208 (1950) and *Indianhead Truck Line, Inc., Etc.—Service Station Supplies*, 81 M.C.C. 715 (1959), upon which appellants particularly rely (Appellants' Brief, pp. 46-50). In the *Miller* case the Commission pointed out (57 M.C.C. 215) that at least some of the same commodities which the applicant would transport as a contract carrier in containers were also susceptible of transportation by it as a common carrier in bulk in ordinary equipment and it went on to point out that a waiver of its right to transport the same commodities as a common carrier, which was exacted of PMT here, was impractical, thus:

"In some cases involving dual operations, we have found it possible to modify either the common-or-contract-carrier operating rights for the purpose of minimizing the objectionable aspects of the dual operations, and thus to approve the transaction, subject to such modification. To accomplish this in the instant case, it would seem that such a substantial revision in the commodities which vendee is now authorized to transport as a common carrier would be required, to remove authority to serve the same shipper or shippers in a dual capacity, as to be impracticable. Vendee has advanced no proposal to modify its common-carrier operating rights. For the reasons stated, the dual operations which would result, in the event the instant

transaction were approved, would not, in our opinion, be consistent with the public interest and the national transportation policy declared in the act."

In the *Indianhead* case it appeared that applicant sought contract carrier authority to transport petroleum products, among other things, while it also transported these products in the same area as a common carrier and did not agree to waive its right to do so.

**III. The Majority of the District Court Properly Held That Neither the Associations Nor Individual Appellants Were "Parties in Interest" Having Any Standing to Bring This Suit Because They Did Not Sustain Any Actual Damage or Competitive Injury from the Commission's Decision.**

Appellants in their complaint alleged that this suit arose under section 205(g) of the Interstate Commerce Act (49 U.S.C. § 305(g)) and section 10 of the Administrative Procedure Act (5 U.S.C. § 1009) (R. 2). The former provides for review of Commission orders by "any party in interest". The latter provides for judicial review of agency action by "any person suffering legal wrong because of any agency action or adversely affected or aggrieved by such action", but the latter provision adds nothing to the former (*Transamerica Corp. v. McCabe*, 80 F. Supp. 704, 707 (D.C.D.C. 1948)).

This action represents the latest effort by the American Trucking Associations and other motor carrier trade associations to straight jacket the railroads by preventing their entry into motor carrier transportation on terms of equality with all others. Cf. *American Trucking Associations v. United States*, *supra*. Essentially this is a "dog-in-the-manger" action. It is significant that the complaint (R. 1-6) nowhere alleges that the Commission's action results in any competitive injury to the appellant truck lines

nor to the trade associations, whose standing to sue can obviously not rise higher than that of its individual truck line members. This is not surprising because it is clear from the Commission's decision that the decision results in no competitive injury to any of the appellants. Thus, even though the Commission's decision indicates that the appellant truck lines had authority to serve part but not all<sup>23</sup> of the involved territory, the Commission found (R. 26-28): that the GM traffic involved was all then handled by rail and would not in the future be handled by the appellant truckers, regardless of whether the applications of PMT were granted; and that the granting of the permit would not result in any loss of traffic or competitive injury to the truck lines but only in diversion of traffic from SP to PMT. Such lack of injury is also to be inferred from the fact that appellants, after their request for a temporary restraining order had been denied by the court, voluntarily withdrew their claim for an interlocutory injunction (R. 73).

We submit that on authority of *Atchison, Topeka and Santa Fe Ry. v. United States*, 130 F. Supp. 76 (E.D. Mo. 1955), *aff'd per curiam*, 350 U.S. 892 (1955), under this set of facts appellants had no standing to maintain this action. There, the shoe was on the other foot. Certain western railroads and their trade association brought suit to set aside a Commission order authorizing acquisition of control of a bankrupt motor line by a financially stronger motor line. The situation there was remarkably like that here in that the complaint alleged that the plaintiffs served the same areas in competition with the motor carriers involved and that the plaintiffs had a direct interest in the enforcement of the National Transportation Policy and section 5 of the Interstate Commerce Act. The court ob-

23. None of the appellants had authority to operate from Oakland to Nevada, Utah and New Mexico (R. 24-26).



served (130 F. Supp. 76, at 78) that "The Complainant must possess something more than a common concern for obedience to law" and indicated that there must be at least actual damage over and above a threat to offer stronger competition in order to give standing to sue. In concluding that the plaintiffs therein had no standing to maintain the action the court said at page 79:

"Though the motor carriers in the instant case may, as a combination under joint control with adequate financial backing, offer stronger competition to the railroads than they did previously, we conclude that the railroads have no 'definite legal right' to be immune from this competition and, therefore, are not 'parties in interest' who may maintain this suit."

The court in that decision also distinguished cases such as *Allon Ry. v. United States*, 315 U.S. 15, on which appellants rely (Appellants' Brief, p. 55) in which competing modes of transport had been held to have standing to sue to set aside orders granting new motor carrier operating rights in that such new rights threatened the traffic of the complainants. The same distinction exists between the situation in the *Allon* case and that here because here, too, the Commission's grant of authority to PMT does not threaten the appellants' traffic. On the same basis the present case is to be distinguished from *Interstate Common Carrier Council of Maryland, Inc. v. United States*, 84 F. Supp. 414 (D.C. Md. 1949) on which appellants also rely (Appellants' Brief, p. 56).

For the same reason the present case is also distinguishable from this court's decision in *American Trucking Associations v. United States*, *supra*, in which the issue of that association's standing to sue was not raised. Thus, it appears from the lower court's decision in that case, that the individual plaintiff truck lines in that case would have

sustained a direct potential loss of traffic for which they were competing, as a result of the Commission's decision. *American Trucking Associations v. United States*, 144 F. Supp. 365, 368 (D.C.D.C. 1956).

Nor does the mere fact that the appellants were parties in opposition before the Commission give them standing to bring an independent suit to set aside the Commission's order. *Pittsburgh & W. Virginia Ry. v. United States*, 281 U.S. 479, 486 (1930).

It is obvious that the majority of the court properly concluded in this connection (R. 86):

"A majority of the court find that the association plaintiffs obviously are not persons possessed of some legal right directly and adversely affected by the administrative action, entitling them to bring an action to set aside the Commission's order. The majority further find that, not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of the extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to institute this action. Had the complaint been filed by some qualified 'party in interest,' all of the plaintiffs would have had the right to intervene under the provisions of 28 U.S.C. § 2323<sup>24</sup> but the right to intervene presupposes the existence of an action brought by a proper plaintiff. Since none of the plaintiffs has alleged or shown standing to bring the action under the statutes providing for judicial review of the Commission's orders, it is the view of Judges Keech and

24. (Footnote 7 in court's opinion) 28 U.S.C. § 2323, third paragraph: "Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections [section 2321 of Title 28 and sections 20, 23, and 43 of Title 49] may intervene in said action at any time after commencement thereof."

Curran that the complaint must be dismissed on the further ground that plaintiffs lack standing to sue."

Appellants' contentions (Appellants' Brief, p. 57) that the holding of the majority of the court makes it within the discretion of the supporting shipper as to whether an order of the Commission granting new operating authority may be judicially attacked by protestants are without merit. It is true, as the Commission stated (R. 23), that: "Should the requested authority be denied, General Motors indicates that it will either support the application of an independent motor contract carrier presently serving a branch plant at Arlington, Tex., identified as Texas Auto Transports, Inc., for similar authority, or institute proprietary operations." But it is not for this reason that the appellants are without standing to sue. Instead, it is because, as the Commission found (R. 26-27), the traffic was then all moving by rail so that they suffered no competitive injury and because "in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points" so that regardless of whether the "application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators."

Finally, appellants (Appellants' Brief, p. 58) contend that the majority decision conflicts with the usual rule that "for every right there is a remedy". But this axiom presupposes that there is no right unless there is an injury. Certainly it was not the congressional purpose in providing for expedited review of Commission orders by a three-judge court with a direct appeal to this Court, to allow this judicial machinery to be clogged by suits of parties who suffered no injury from the administrative action.

**CONCLUSION**

For the reasons above indicated this appeal raises no substantial question of merit. Appellants, though not injured by the Commission action are attempting to upset operating rights which have been in effect since November 24, 1958, in an effort to give the National Transportation Policy a construction which Congress, the Commission and this court have never seen fit to give it. This they would do by legal arguments which have no vitality except as to a purely fictitious case which appellants attempt to paint by baldly misconstruing both the Commission and lower court decisions. The lower court's decision should be affirmed and the costs of this appeal assessed against appellants.

Respectfully submitted,

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**Certificate of Service**

I, ROBERT L. PIERCE, one of the attorneys for appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 25th day of April, 1960, I served copies of the foregoing brief on the several parties as follows:

1. On appellants, American Trucking Associations, Inc., its Contract Carrier Conference, National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truck-away, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to Walter N. Bieman, Esq., 2150 Guardian Bldg., Detroit 26, Michigan, to Larry A. Eskilsen, Esq., 1111 E Street, N.W., Washington 4, D.C., to Charles W. Singer, Esq., 1825 Jefferson Place, N.W., Washington, D.C., and to Peter T. Beardsley, Esq., 1424 Sixteenth Street, N.W., Washington, D. C.

2. On the United States, by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D.C., and Willard R. Memler, Esq., Department of Justice, Washington 25, D.C.

3. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Esq., Assistant General Counsel, at the offices of the Commission, Washington 25, D.C.

ROBERT L. PIERCE

(Appendices Follow)



## **Appendix A**

### **NATIONAL TRANSPORTATION POLICY**

[September 18, 1940.] [49 U.S.C., preceding § 1, 301, 901, and 1001.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

### **COMBINATIONS AND CONSOLIDATIONS OF CARRIERS**

Sec. 5. [As amended August 24, 1912, February 28, 1920, June 10, 1921, June 16, 1933, June 19, 1934, August 9, 1935, September 18, 1940, and August 2, 1949.] [49 U.S.C. § 5.]

•   •   •   •

(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in Section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers

by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

#### ADMINISTRATION

Sec. 205(g). [August 9, 1935, amended September 18, 1940, and May 24, 1949.] [49 U.S.C. § 305(g).]

(g) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I: *Provided*, That where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under Section 2284 of Title 28 of the United States Code, and such court, if it determines that the Commission has such power, may enforce by writ of

mandatory injunction the Commission's taking of jurisdiction.

### TERMS AND CONDITIONS OF CERTIFICATE

Sec. 208. [August 9, 1935.] [49 U.S.C. § 308.] (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204(a)(1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

Note—Comparable provisions, part III, § 309(d); part IV, § 110(e).

### PERMITS FOR CONTRACT CARRIERS BY MOTOR VEHICLE

Sec. 209(b). [August 9, 1935, amended June 29, 1938, September 18, 1940, September 1, 1950, and August 22, 1957.] [49 U.S.C. § 309(b).]

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to Section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this part and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the



contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6): *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203(a)(15), as in force on and after the effective date of this proviso.

### DUAL OPERATIONS

Sec. 210. [August 9, 1935, amended September 18, 1940] [49 U.S.C. § 310.] Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate, as a common carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such

controlling person, controlled person, or person under common control, holds a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory; and

(2) No person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory.

#### RATES, FARES, AND CHARGES OF COMMON CARRIERS BY MOTOR VEHICLE

Sec. 216. [August 9, 1935, as amended June 29, 1938, and September 18, 1940.] [49 U.S.C. § 316.]

• • • • •

(a) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water.

In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

## PUBLIC LAW 85-163

85th Congress, S. 1384—August 22, 1957

## AN ACT

To revise the definition of contract carrier by motor vehicle as set forth in section 203(a) (15) of the Interstate Commerce Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*  
That part II of the Interstate Commerce Act, as amended, is amended as follows:

(1) By changing paragraph (15) of section 203 (a) thereof (49 U.S.C. 303 (a) (15)), to read as follows:

"(15) The term 'contract carrier by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

(2) By adding to section 203 (49 U. S. C. 303), the following new subsection:

"(c) Except as provided in section 202 (c), section 203 (b), in the exception in section 203 (a) (14), and in the second proviso in section 206 (a) (1), no person shall engage in any for-hire transportation business by motor vehicle in interstate or foreign commerce, on any public highway or within any reservation under the exclusive jurisdiction of

the United States, unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation."; and

(3) By adding to section 212 (49 U. S. C. 312), the following new subsection:

"(c) The Commission shall examine each outstanding permit and may within one hundred and eighty days after the date this subsection takes effect institute a proceeding either upon its own initiative, or upon application of a permit holder actually in operation or upon complaint of an interested party, and after notice and hearing revoke a permit and issue in lieu thereof a certificate of public convenience and necessity, if it finds, first, that any person holding a permit whose operations on the date this subsection takes effect do not conform with the definition of a contract carrier in section 203 (a) (15) as in force on and after the date this subsection takes effect; second, are those of a common carrier; and, third, are otherwise lawful. Such certificate so issued shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit."

SEC. 2. Part II of such Act is further amended (1) by inserting after the second sentence of section 209 (b) (49 U. S. C. 309 (b)) a new sentence to read as follows: "In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant; the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing

character of that shipper's requirements."; and (2) by changing the third sentence of section 209 (b) (49 U. S. C. 309 (b)) to read as follows: "The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204 (a) (2) and (6): *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203 (a) (15), as in force on and after the effective date of this proviso."



**Appendix B****TESTIMONY OF OLIVER ETZEL, EXECUTIVE ASSISTANT OF PMT (R. 104-105):**

O. D. ETZEL, previously duly sworn, testified further as follows:

"Redirect examination.

By Mr. Meinhold:

Q. To your knowledge, has there ever been any complaint or claim of discrimination advanced by any shipper or consignee or other person resulting from the holding of dual authority by Pacific Motor Truck Company?

A. There has not.

Q. And, in your opinion, if this authority is granted, will any discrimination result in so far as any shipper or consignee or other person is concerned?

A. I don't believe any actual discrimination would result, and I say that for the reason that the common carrier operating rights, held by Pacific Motor Trucking Company between San Francisco, Oakland, and Ashland, Oregon, has been operating for a good many years, something in excess of ten, by Pacific Motor Trucking Company; and during that period, I have no recollection of an automobile ever having been offered by the public for transportation.

While I have not analyzed all the freight bills covering that period of operation, I did ask our freight traffic manager for his recollection on the subject, and he confirms my opinion; namely, that he does not recall of an automobile having been offered for transportation, and it would seem that with the small use of that common carrier service by the public, there wouldn't be much discrimination involved.

Q. You have state-wide authority in California to transport assembled automobiles and assembled trucks as a contract carrier in intrastate commerce, have you not?

A. We do.

Q. And you are performing operations of that nature at all of the plants in General Motors Corporation in the State of California?

A. We are serving, I think, in the State of California, every General Motors dealer.

Q. And that has existed for some period of time?

A. It has, since 1935, to the northern half of the state, and I believe within a period of about three or four years thereafter to points in the southern part of the State from that territory.

Q. And to your knowledge has there ever been any complaint or claim of discrimination in so far as intrastate commerce is concerned, resulting from dual operations of Pacific Motor Trucking Company in California?

A. No, there never has been such a complaint.

Q. As a matter of fact, Pacific Motor Trucking Company does conduct common carrier operations in California, does it not?

A. It conducts very extensive common carrier operations in California, and many of those operations are conducted between points which are common to the service being provided as a contract carrier.

Q. But, of course, you don't transport the same commodities between the same points both as a contract and common carrier?

A. We do not. Our common carrier tariffs are restricted to the transportation of automobiles."

—MORE TO COME—

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FILED

APR 27 1960

MASS. & BROWNING, Clerk

No. 14

# In the Supreme Court of the United States

October Term, 1959

AMERICAN TRUCKING ASSOCIATION, INC., ET AL.  
APPELLANTS

UNITED STATES OF AMERICA AND DISTRICT ATTORNEY GENERAL  
COMMISSIONER AND PACIFIC MOTOR TRUCKING CO. AND  
GREATWAY MOTOR CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA

REMAND FOR THE UNITED STATES

J. EDGAR HOOVER

Attorney General

ROBERT A. FROST

Assistant Attorney General

WILLIAM A. BROWN

Clerk

Department of Justice, Washington, D.C.

# **In the Supreme Court of the United States**

**OCTOBER TERM, 1959**

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**No. 74**

**AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,**

**APPELLANTS**

**v.**

**UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION, AND PACIFIC MOTOR TRUCKING CO. AND  
GENERAL MOTORS CORPORATION**

---

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

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## **MEMORANDUM FOR THE UNITED STATES**

The United States is filing this memorandum to advise the Court as to its position on the issues presented.<sup>1</sup> The essential facts of the controversy are set out in the principal briefs filed with the Court and we shall not undertake to restate them.

We agree with the Commission (R. 31-32, 58-61) and the court below (R. 82-84) that the grant of contract carriage authority to Pacific Motor Trucking Company (PMT), a subsidiary of the Southern Pacific

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<sup>1</sup> The United States, the statutory defendant in the three-judge district court below (see 28 U.S.C. 2322), filed a neutral answer neither supporting nor opposing the Commission's orders (R. 67).



(SP), was consistent with Section 210 of the Interstate Commerce Act, 49 U.S.C. 310. We also concur in the Commission's tacit acknowledgment that the appellants had standing to seek review of the Commission orders. And we agree with the Commission determination (R. 29), accepted by the court below (R. 82), that "the rationale which requires a reading of the Act as a whole and consideration of the policy underlying § 5(2)(b) [of the Interstate Commerce Act] as a guiding light in the issuance of § 207 common carrier certificates is equally applicable to the granting of § 209(b) permits for contract carrier operations" (*ibid.*).

We believe, however, that in the absence of a showing of "special circumstances" establishing special need for issuing a permit to a motor subsidiary of a railroad (as contrasted with the need for contract carrier service generally), this grant cannot be justified either on the ground that the grant was "restricted" to an extent sufficient to comply with the underlying policy of Section 5(2)(b), or that further restrictions were not feasible since they would have had the effect of converting an application for contract carrier operation into a grant of common carrier authority.

Recently, in *American Trucking Assns. v. United States*, 355 U.S. 141, this Court directed its attention

<sup>2</sup> Section 5(13) of the Interstate Commerce Act, 49 U.S.C. 5 (13), expressly provides that, for the purposes of Section 5, the term "carrier" covers any "motor carrier subject to part II" of the Act. Section 203(a)(16) of that part, 49 U.S.C. 303(a)(16), specifies that the term "motor carrier" includes both common and contract carriers.



to the obligations of the Commission in passing upon applications for new common carrier authorization by motor carrier subsidiaries of railroads. It pointed out that Section 207 of the Interstate Commerce Act, relating to such applications, does not contain a provision—such as that contained in Section 5(2) (b), governing consolidations, mergers and acquisitions—precluding the grant of an authorization unless the Commission finds it will enable the railroad “to use service by motor vehicle to public advantage in its operations” and that the grant will not unduly restrain competition. Consequently, the Commission is under no statutory mandate to limit grants of Section 207 applications to operations auxiliary or supplemental to train service. Cf. *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419. The Court approved the Commission’s view that “the policy of § 5(2) (b) [is] a guiding light, not \* \* \* a rigid limitation” in interpreting Section 207 (355 U.S. at 149). It added, however, that “the underlying policy of § 5(2) (b) must not be divorced from proceedings for new certificates under § 207, and that “the Commission must take ‘cognizance’ of the National Transportation Policy [“to preserve the inherent advantages of motor-carrier service”] and apply the Act ‘as a whole’ ” (pp. 151-152). The Court concluded that the Commission might occasionally issue motor transport certificates to railway subsidiaries without the normal auxiliary and supplementary restrictions. This, it indicated, would be permissible “where ‘special circumstances’ prevail, namely, where unrestricted operations by the rail-owned carrier are found on spe-

cific facts and circumstances to be in the public interest" (pp. 149-150. The special circumstances in that case were that the "other carriers frequently failed to handle such traffic, and gave service inferior to that of Motor Transit when they did operate" (p. 153).

In the present case, we find no such "special circumstances" which justify the grant of the contract carriage authority. We point out initially that the restrictions imposed by the Commission in this case do not serve to confine the PMT operation to activities related to the operations of the SP. It is true that the District Court stated that the Commission's report was "in harmony" with the decisions of this Court in *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419, and *American Trucking Assns. Inc. v. United States*, 355 U.S. 141. (R. 85). It reached this conclusion because it thought that the grant to PMT was "restricted in many respects" (R. 83); that the additional restrictions imposed on a common carrier grant in the *Rock Island* case, *supra*, were not applicable to the contract carrier operations in issue here (R. 81); and that the Commission had therefore complied with the policies underlying § 5(2)(b) "insofar as practicable in dealing with an application for contract car-

\* The Court cited (p. 150, n. 10) with apparent approval the Commission's statement that the policy of imposing auxiliary and supplemental restrictions should be relaxed in Section 207 cases "only where the circumstances clearly establish (1) that the grant of authority has not resulted and probably will not result in the undue restraint of competition, and (2) that the public interest requires the proposed operation, which the authorized independent motor carriers have not furnished, except where it suited their convenience."

rier authority" (R. 82). However, none of the restrictions to which the court refers (R. 83)—(1) the limiting of PMT's authority to points on the rail lines of the SP, (2) the requirement that PMT agree to restrict its outstanding common carrier certificate against carriage of automobiles and trucks (a requirement the Commission imposed to avoid questions under Section 210(b) of the Act), and (3) the reservation of the Commission's right to impose in the future such further conditions "as the public interest and national transportation policy may require"—serves the policy embraced in Section 5(2)(b): to "enable [the rail] carrier [SP] to use service by motor vehicle to public advantage in its [SP's] operations."

It is, of course, true that the limitation of PMT's authority to serve General Motors (GM) to points on the rail line of the SP restricts the grant geographically—and, as the Commission indicated (R. 31), protects independent trucking carriers, as well as other rail lines, from competition with PMT for GM's business for car and truck deliveries to more distant points. But such a restriction does not prevent PMT, throughout the very wide area in the West where the SP does have rail lines, from operating under contract for GM in a manner totally unrelated to any "use" by the SP in its "operations."

The other two restrictions are even less in point. The fact that PMT has agreed to give up the bare possibility of transporting cars and trucks under its

\* See *Pennsylvania Truck Lines, Inc. Control-Barker Motor Freight*, 5 M.C.C. 9, 11; *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419, 439.

common carrier certificate<sup>2</sup> does not answer the question whether the significant contract authority it has received will be used to public advantage in SP's operations. And the reservation of power to impose such future conditions as may be necessary or desirable in the public interest is no inhibition on present operations by PMT. Moreover, in the light of the Commission's stated views as to its lack of power to impose restrictions on a contract carrier (R. 30), it offers little promise of meaningful additional restrictions in the future. The end result is that, within the wide geographic bounds prescribed, PMT, despite "the absence of any showing of unusual conditions" (R. 31), has been awarded unrestricted authority to transport GM's cars and trucks.

Nor does the alleged unavailability of a number of the specific restrictions normally imposed on common carrier motor subsidiaries of railroads justify, in the absence of special circumstances, the making of an essentially unrestricted grant. It may be that there are no restrictions available which would limit PMT to operations auxiliary or supplemental to those conducted by the SP and, at the same time, permit it to conduct the carry-away service GM wishes. If this is in fact the case, then, in the absence of special circumstances, the underlying policy of Section 5(2) (b) would appear to require a denial of PMT's application.

<sup>2</sup> "[T]here is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier \* \* \*" (R. 32).



The Commission's report (R. 27-28) distinguishes between the authorization made to points on the SP's rail lines and its rejection of any authorization beyond these points on the grounds that (1) the traffic authorized to PMT had previously gone by rail via the parent SP, and (2) GM had publicly stated that, if PMT did not receive the award, it would not give its business to any of the protestants but would instead support certification of a Texas contract carrier, with which it had already done business, or institute proprietary operations of its own. But, in the light of Section 5(2)(b), PMT has no rights or equities in taking over business from its rail parent when a shipper decides to switch from rail to truck service. See *Rock Island case, supra*, at 443-444.\* And, under settled Commission policy,<sup>7</sup> a shipper cannot, by its unilateral action, control the grant or rejection of an application. Although GM "allege[d]" that the existing carriers were unable to offer the "personalized and integrated service" provided by PMT, that the existing contract carriers' services were "in some

\* The Court there stated that restrictions limiting motor subsidiaries of a railroad to operations merely auxiliary or supplemental to rail operations "hamper railroad companies in the use of their physical facilities—stations, terminals, warehouses—their personnel and their capital in the development of their transportation enterprises to encompass all or as much of motor transportation as the roads may desire. The announced transportation policy of Congress did not permit such development."

<sup>7</sup> See, e.g., *Nygard Express Co., Inc.—Contract Carrier Application*, 69 M.C.C. 340, 342; *Gray Contract Carrier Application*, 69 M.C.C. 695, 704. Cf. *Hudson Transit Lines v. United States*, 82 F. Supp. 153, 157 (S.D.N.Y.); *Inland Motor Freight v. United States*, 60 F. Supp. 520, 524 (E.D. Wash.).



instances" utilized by its competitors, and that none was as conveniently located to GM as PMT (R. 23), these assertions of "special circumstances" were expressly rejected by the Commission as reasons for serving points *beyond* the SP lines because GM had not availed itself of the services of existing carriers (R. 27).

Unless there are "special circumstances" which furnish compelling reasons for granting a permit for motor carriage to a railroad subsidiary, the policy of the Act, as set forth in the National Transportation Policy as well as Section 5(2)(b), is against any railroad-controlled motor carriage not connected with the railroad's own operations. This objective is not met by limiting a railroad subsidiary to part of the independent operating authority it seeks. The only circumstances advanced in the Commission's report to justify operations by PMT independent of the SP's rail operations—that the railroad previously carried the traffic and GM had stated it would not give it to the protestants—are not, we believe, the type of "special circumstances" contemplated by this Court in *American Trucking Assns. v. United States*, *supra*. Respectfully submitted.

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APRIL 1960.

APR 27 1960

No. 74

HARRIS &amp; BROWNE, CHS.

**Supreme Court of the United States**

October Term, 1959

AMERICAN TRUCKING ASSOCIATIONS, INC.; THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.; NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION; CONVOY COMPANY; ROBERTSON TRUCK-A-WAY, INC.; HADLEY AUTO TRANSPORT, E. & H. TRUCKAWAY; WESTERN AUTO TRANSPORT, INC.; and KENDRA AUTO TRANSPORT CORP. APPELLANTS

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; PACIFIC MOTOR TRUCKING COMPANY; and GENERAL MOTORS CORPORATION

On Appeal from the United States District Court  
for the District of Columbia

**WRIT FOR THE INTERSTATE COMMERCE  
COMMISSION**

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Interstate Commerce Commission  
Washington 25, D. C.

April 1960

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# **Supreme Court of the United States**

**OCTOBER TERM, 1959**

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**No. 74**

**AMERICAN TRUCKING ASSOCIATIONS, INC.; THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC.; NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION; CONVOY COMPANY; ROBERTSON TRUCK-A-WAYS, INC.; HADLEY AUTO TRANSPORT; B & H TRUCKAWAY; WESTERN AUTO TRANSPORTS, INC.; and KENOSHA AUTO TRANSPORT CORP., APPELLANTS**

**v.**

**UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; PACIFIC MOTOR TRUCKING COMPANY; and GENERAL MOTORS CORPORATION**

---

**On Appeal from the United States District Court  
For the District of Columbia**

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**BRIEF FOR THE INTERSTATE COMMERCE  
COMMISSION**

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## **OPINIONS BELOW**

The opinion of the District Court (R. 70) is reported at 170 F. Supp. 38. The reports of the Inter-

state Commerce Commission (R. 54-63, 8-39) are reported at 71 M.C.C. 561 and 77 M.C.C. 605.

### **JURISDICTION**

The judgment of the District Court was entered January 30, 1959 (R. 87). Notice of appeal was filed March 27, 1959 (R. 88). Probable jurisdiction was noted on October 12, 1959 (R. 92). The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b).

### **STATUTES INVOLVED**

The National Transportation Policy (54 Stat. 899, 49 U.S.C., preceding Section 1), and the pertinent provisions of the Interstate Commerce Act (24 Stat. 379, as amended, 49 U.S.C. 1 et seq.) are set forth in Appendix A to the brief of the appellants (App. Br. pp. 1a-7a).

### **QUESTIONS PRESENTED**

1. Whether the proviso in Section 5(2) (b) of the Interstate Commerce Act precludes the Commission from authorizing, pursuant to Section 209, a subsidiary of a railroad to transport as a motor contract carrier new automobiles and trucks for a single shipper, such service being restricted to points which are stations on the parent railroad.

2. Whether the District Court usurped the Commission's function by making independent findings of fact.

3. Whether the Commission's grant of contract carrier authority was based upon an erroneous interpretation of Section 209(b).

4. Whether the grant of contract carrier authority here involved violates Section 210 of the Act.

### STATEMENT

This is an appeal by American Trucking Associations, Inc., its Contract Carrier Conference, the National Automobile Transporters Association, and six motor carriers, four of them being common carriers by motor vehicle and two of them being contract carriers by motor vehicle,<sup>1</sup> from the decision of a three-judge District Court sustaining the order of the Commission of September 9, 1958 (R. 8-43),<sup>2</sup> in four consolidated dockets of the Commission, namely, *Pacific Motor Trucking Co. Extension—Oregon*, MC-78787 (Sub-No. 34); *Pacific Motor Trucking Co. Extension—New Motor Vehicles to Additional Nevada Points*, MC-78787 (Sub-No. 35); *Pacific Motor Trucking Co. Extension—New Motor Vehicles, Raymer, Cal. to Arizona*, MC-78787 (Sub-No. 36); and *Pacific Motor Trucking Co. Extension—Automobiles—California Assembly Plants to Seven Western States*, MC-78787 (Sub-No. 37). The Commission

<sup>1</sup> The two motor carrier appellants which are contract carriers by motor vehicle are Hadley Auto Transport (Prot. Ex. 107, R. 443, 451, 594-98) and B. & H. Truckaway (Prot. Ex. 121, R. 466, 637-38).

<sup>2</sup> R. 42-43 is a notice to the parties issued on September 22, 1958, correcting the findings of the Commission on Sheet 31 of its report (R. 33) by adding after the word "require" in line 11 of R. 33, the following: "will be consistent with the public interest and the national transportation policy." This report of September 9, 1958, as corrected, has been printed at 77 M.C.C. 605.

decision directed issuance, upon certain conditions, of motor contract carrier permits under section 209 (b) of the Interstate Commerce Act (49 U.S.C. 309(b)), authorizing Pacific Motor Trucking Company (hereinafter called PMT) of San Francisco, California, to transport, generally speaking, automobiles and trucks, except trailers, in initial movements, in truckaway and/or driveaway service, from three assembly plants of the General Motors Corporation (hereinafter called GM) located in California, to three named off-rail points in Nevada and to all points in Oregon, Nevada, Utah, Arizona and New Mexico which are stations on the rail lines of the Southern Pacific Company (hereinafter called SP). Appellee PMT, the applicant, and appellee GM, the applicant's supporting shipper, intervened in the court below (R. 43-45 and 74) in support of the Commission's order. PMT is a wholly-owned subsidiary (R. 18) of SP, which operates an extensive railroad system in the seven states of Oregon, California, Nevada, Utah, Arizona, New Mexico and Texas (Appl. Ex. 3, R. 169-70, 187, 473; Prot. Ex. 70, R. 395, 396, 552-53; and Prot. Ex. 84, R. 400-01, 403, 562-63).

*Assembly plants of GM:* GM produces various makes of automobiles and trucks, including "Chevrolet" automobiles and trucks, and "Buick", "Oldsmobile" and "Pontiac" automobiles. The component parts of such commodities are coordinated and assembled at various GM plants throughout the country, and the completed products are distributed from those plants to dealers in various geographical

regions. Such distribution is effected from each plant throughout the country either by rail or contract motor carrier (R. 209-11, 270), *except* that the California assembly plants do not have region-wide motor contract carrier service available (R. 215-16, 270).

Transportation from two California assembly plants of the Chevrolet Division of GM is involved in the Commission's grants in this case, one plant being located at Oakland<sup>3</sup> and the other at Raymer.<sup>4</sup> Also involved in this case is the assembly plant for the Buick, Oldsmobile and Pontiac Division<sup>5</sup> of GM, located at South Gate, California, in the Los Angeles metropolitan area, but not contiguous to that city.

As established by GM, the normal distribution territory of the Chevrolet Oakland No. 1 plant covers all of Washington and Oregon, the western part of Idaho and the northern portions of California and Nevada (Int. Ex. 18, R. 209, 500-01). The territory for

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<sup>3</sup> Various described in the record as the "Oakland No. 1" or "Melrose" plant (R. 171, 208, 211). It assembles *passenger* automobiles only (R. 96). A second Chevrolet assembly plant at Oakland, known as the "Oakland No. 2" or "East 14th St." plant (R. 96) is located some 3 miles distant from the Melrose plant. It assembles commercial vehicles only (R. 102). However, the Chevrolet *trucks* assembled at the Oakland No. 2 plant which are to be transported by PMT's motor service are taken by GM to the Oakland No. 1 plant for delivery to PMT (R. 174-75, and 57). This situation accounts for the Commission's statement in its report (R. 21) that "[Oakland] Plant No. 1, so far as applicant is concerned, is the shipping point for both plants [Nos. 1 and 2]."

<sup>4</sup> Various described in the record as the "Raymer", "Van Nuys", or "Los Angeles" plant, located within the City of Los Angeles (R. 179, 208, 211).

<sup>5</sup> Commonly known as "BOP" (R. 269).



the Chevrolet Raymer plant covers the eastern part of Idaho, the western part of Utah, the southern parts of California and Nevada, the southwestern corner of New Mexico, and all of Arizona except for the northeastern corner (Id.). The normal distribution area for the BOP plant at South Gate includes all of Washington, Oregon, California, and Nevada, and the western portions of Idaho, Utah and Arizona (Int. Ex. 23, R. 269-70, 502-03).

GM established those assembly plants on the West Coast, and it is perennially and notoriously in the midst of extreme sales competition with other makers of automobiles and trucks (R. 205-06, 226-27, 254-55). Since 1935, PMT has been a contract carrier from the Oakland Chevrolet plant (R. 171-72), and from the Raymer Chevrolet and South Gate BOP plants since their inception in 1947 and 1937, respectively (R. 179, 182). This has been pursuant to GM's long-standing policy of employing only contract motor carriers (R. 213-17, 251-53, 275, 288-89). PMT has given GM satisfactory, dedicated service (R. 173, 176, 182, 186, 213, 275) within the limits of that carrier's permits, which service, up to the time the permits were issued in this case, has been limited to transportation in intrastate and interstate or foreign commerce physically performed within California, except for two permits previously issued by the Commission (later to be described), authorizing transportation from Oakland to three small Nevada points which are not located on any rail line, and to all Nevada points which are stations on the SP (R. 18).

Practically all other transportation from the three California plants to the distribution territories mentioned has in the past been performed in rail movements, via SP, or via SP and its rail connections (R. 198, 211, 221-22, 278-79).

*GM's needs for extension of PMT's services.* GM's dealers in those outlying areas have been demanding more expeditious service than rails can furnish (R. 216, 273), and some dealers cannot afford deliveries in rail carrier quantities (R. 113). The record shows material differences in transit times from origin plants to destinations, between all-rail movements and all-motor (PMT) movements (Appl. Ex. 8, R. 170, 187, 480-87, and Appl. Ex. 32, R. 357-58, 517), which time factor has an adverse effect upon the competitive situation of GM's dealers, as opposed to dealers for other makes of automobiles.

In addition to the physical factor resulting from the proximity of PMT's terminals to the discharge gates at GM's plants (to be discussed later), which no other motor carrier can match, GM had the assurance from past experience with PMT that it will continue to dedicate its services and equipment as a contract carrier solely to the performance of GM's distribution. No motor common carrier, such as appellants Convoy, Robertson, Western, and Kenosha, can lawfully furnish such exclusive service by reason of the very fact that each is a common carrier with a duty to render service to all shippers alike, and not to confine its service to one shipper (R. 217). And as for the two contract carrier appellants, Hadley and B & H, which have appropriate territorial auth-

ority to perform *some* service for GM (Prot. Ex. 107, R. 594-95, and Prot. Ex. 121, R. 637-38), GM has declined to utilize their services, for they are under contract to perform services for, or have previously dedicated their services to, GM's competitors in the area (R. 161-63, 443-48, 466). The reason assigned for such declination was the possibility that the quality or quantity of their performance for GM may suffer in the event the demands of competing automobile manufacturers for their services and equipment were more than those contract carriers could meet on particular occasions (R. 251-52).

*Physical characteristics at the three California plants.* Immediately adjacent to each of the GM assembly plants at Oakland No. 1, Raymer, and South Gate, California, PMT has for a number of years maintained terminals to facilitate the flow of new automobiles coming off the assembly lines in the plants. No space has been available at either of those plants for motor carriers other than PMT to provide terminal receiving facilities in the same manner as has been provided by PMT. These and other unique physical characteristics of the three plants were testified to and are graphically shown in the record as to each of these plants, viz., *Oakland No. 1*, Appl. Exs. 4, 5 and 6, R. 169, 174-75, 186-187, 189-94, 474-79; *Raymer*, Appl. Exs. 9, 10 and 11, R. 179-82, 187-91, 488-93; *South Gate*, Appl. Exs. 12, 13 and 14, R. 182-85, 187, 191-93, 494-99. With respect to the Raymer plant, the Commission said in its report (R. 19-20):

Its [GM's] plant at Raymer is adjacent to yard facilities owned by Southern Pacific and leased to applicant. Inasmuch as extensive storage facilities are not maintained at the Raymer plant, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers. For these reasons, shipper desires the exclusive service of one contract carrier so that there will be close cooperation and no division of responsibility. Use of any other carrier would require outgoing shipments to be dispatched through shipper's incoming gate, causing confusion and disarranging the operations at the plant which are geared to the use of applicant's service from its nearby yard.

In the same report (R. 22), the Commission found that the physical facilities at the Oakland No. 1 and South Gate plants were similar to those at the Raymer plant.

*Previous authorizations to PMT.* Prior to the filing of the applications in the four dockets in question here, PMT had been issued motor common carrier certificates by the Commission in Dockets Nos. MC-78786 and various sub numbers in that series<sup>a</sup> to transport general commodities, with certain exceptions, between points in Oregon, California, Nevada, Arizona, New Mexico and Texas, generally over regular routes paralleling the rail lines of the parent SP, and generally restricted to service which is auxiliary to or supplemental of the rail service of the proprietary railroad (R. 18). PMT, since December 10,

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<sup>a</sup> R. 347-48; Appl. Ex. 30 in the Sub-37 docket (79 sheets).

1935, has held *contract* carrier operating authority from the Railroad Commission of the State of California for *intrastate* transportation of automobiles and trucks within that state (R. 105, 172, 202 and Appl. Ex. 2 in Sub-37 Record, sheets 54 and 55). The Commission also had issued to PMT four *contract* carrier permits in sub numbers in docket series No. MC-78787, containing no "auxiliary or supplemental" service restrictions, but with approvals given in each case to dual operations by PMT as a common carrier and as a contract carrier, for the transportation of new automobiles, new trucks, and new buses in initial movements,<sup>7</sup> in truckaway and driveaway service, namely, (1) from Oakland, Calif., to the non-rail point of Hawthorne, Nevada, and all Nevada rail points located on the SP (MC-78787, Sub-23, issued June 20, 1944) (R. 172); (2) for foreign commerce between Los Angeles, Calif., on the one hand, and, on the other, Calexico and San Ysidro, Calif., both lo-

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<sup>7</sup> An "initial movement" is "the transportation of new automotive equipment from a point of manufacture or assembly to destination, or to a point of interchange with another common carrier. Transportation of new, used, damaged or repossessed cars from other than the point of manufacture or assembly is called a "secondary movement". *Clark Ext. of Operations*, 16 M.C.C. 535, 537 (1939); *Howard Sober, Inc., Ext.—Allentown, Pa.*, 23 M.C.C. 80, 81 (1940).

<sup>8</sup> If the motor vehicles being transported are being moved with motive power furnished by one or more of such vehicles, the service is "driveaway". If not, it is "truckaway". *New Automobiles in Interstate Commerce*, 259 I.C.C. 475, 481 (1945); *Danbury Extension of Operations—Charlotte, N. C.*, 46 M.C.C. 147, 149 (1946).



cated on the Mexican border (MC-78787, Sub 27, issued April 21, 1950) (R. 18); (3) from Raymer, Calif., to points in the Los Angeles Harbor Commercial Zone," for further transshipment by water (MC-78787, Sub 30, issued June 22, 1950) (R. 18); and (4) from Oakland, Calif., to Carson City and Minden, Nevada, both being non-rail points (MC-78787, Sub 31, issued June 21, 1955) (R. 172). PMT's only shipper under these four I.C.C. permits and its California intrastate permit has been GM (R. 186). Thus, prior to the filing of the four contract carrier applications involved in this case, the Commission had issued so-called "unrestricted" contract carrier operating authorities to PMT for service from GM plants in California for some physically interstate operations across the state line into Nevada, and for foreign commerce between points physically within California, with approval of its dual operations.

*The present proceedings.* On October 14, 1955, March 5, 1956, March 9, 1956, and October 23, 1956 (R. 10-11), PMT filed in its Dockets Nos. MC-78787, Subs Nos. 34, 35, 36 and 37, respectively, applications for contract carrier permits under Section 209 (b) to extend its contract carrier service in the transportation of new automotive equipment to new interstate destinations from the two GM Chevrolet plants at Oakland and from the Chevrolet plant at Raymer and to begin a new interstate service from the BOP

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\* A special zone established by the Commission under Section 203(b) (8) of the Interstate Commerce Act, 49 U.S.C. 303(b) (8), in 3 M.C.C. 248, and 51 M.C.C. 676.

plant of GM at South Gate. The motor carrier service for which authority was *requested* in these four applications is set forth in detail in the Commission's report of September 9, 1958 (Id.). Generally speaking, it may be said that by the *Sub 34* application PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, Calif., to all Oregon points which are stations on the SP; by the *Sub 35* application, PMT sought the right to serve three additional non-rail points in Nevada from Oakland, Calif.; by the *Sub 36* application, PMT sought to serve all Arizona points which are stations on the SP from the Raymer Chevrolet plant; and by the *Sub 37* application, PMT sought authority to round out its service areas from the two Oakland and the Raymer Chevrolet plants to include *all* points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona and New Mexico, whether or not they were stations on the SP, and also from the BOP plant at South Gate to *all* points in the same seven-state area, except that Montana was substituted for New Mexico.

Following appropriate administrative proceedings, which included oral argument before the entire Commission with respect to the dual operations question involved in the *Sub 34* application, the Commission issued its report of May 8, 1957, published in 71 M.C.C. 561 (R. 54-63), authorizing the issuance of a permit in the *Sub 34* docket. Subsequently, the four applications were consolidated for oral argument before the entire Commission on December 4, 1957. The

report of the Commission following such oral argument was issued on September 9, 1958, published in 77 M.C.C. 605 (R. 8-43), partially granting each application, subject to certain conditions (R. 33 and 39).

In general, the net effect of the Commission's action here, from a territorial standpoint, may be described as follows: PMT had previously been issued permits to serve SP points in Nevada, and three non-rail points in that state. By the grants made here, PMT was authorized to serve three additional non-rail Nevada destinations, and to serve SP points in the four additional states of Oregon, Utah, Arizona, and New Mexico. PMT's applications were denied as to any service in Washington, Idaho, and Montana, and as to non-SP points in Oregon, Nevada (with the exception of the three additional non-rail points mentioned), Utah, Arizona, and New Mexico.

The instant civil action was filed by the protestant motor carriers and their trade associations before a three-judge District Court for the District of Columbia on October 7, 1958, (R. 1). Following a denial by the District Court on October 8, 1958, of a temporary restraining order (R. 73), permits in PMT's Sub 34, 35, 36 and 37 dockets were issued by the Commission on November 24, 1958 (Id.). The three-judge District Court rendered its opinion (170 F. Supp. 38) sustaining the Commission's grants on January 20, 1959 (R. 70-86), the majority of that court also holding (R. 85-86) that none of the nine plaintiffs had shown standing to sue. Judgment was entered in the

District Court on January 30, 1959 (R. 87-88), and notice of this appeal was filed on March 27, 1959 (R. 88-91)

## SUMMARY OF ARGUMENT

### I

The Interstate Commerce Commission, pursuant to Section 209(b)<sup>9</sup> of the Interstate Commerce Act, authorized Pacific Motor Trucking Company, a wholly-owned subsidiary of the Southern Pacific Company, to transport as a motor contract carrier new automobiles and trucks from three General Motors plants in California to points in Oregon, Nevada, Utah, Arizona and New Mexico which are stations on the Southern Pacific railroad (plus three off-rail points in Nevada). The appellants contend that the grant of such contract carrier authority to a rail affiliate is precluded by the proviso of Section 5(2)(b) that before a railroad or its affiliate may be authorized to purchase, or otherwise acquire control of an existing motor carrier, the Commission must find that "the proposed transaction \* \* \* will enable such [railroad] to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition."

GM, like other motor manufacturers, has a unique need for transportation service, synchronized with its assembly lines, for the delivery of new automobiles and trucks to its dealers. Its three California assembly plants have long made extensive use of PMT's intrastate contract carrier service to deliver its products to California points. PMT's contract

carrier service has been exclusively for GM, and it has established its receiving yards adjacent to the latter's three California plants. GM used the Southern Pacific railroad for the movement of practically all of the remainder of the output of its California plants to dealers located in other states in the distribution area of those plants, which variously comprise Oregon, Washington, Montana, Idaho, Nevada, Utah, Arizona and New Mexico (in addition to California). For competitive and other reasons, motor transportation of its products to this entire distribution area would be advantageous to GM. Accordingly, at GM's request, PMT applied for motor contract carrier permits authorizing it to transport new automobiles and trucks from GM's California plants to all points in those states (except California).

The Commission authorized PMT to serve GM's California plants as a contract carrier, but only to those points in Oregon, Nevada, Utah, Arizona and New Mexico which are stations on the Southern Pacific railroad. In thus restricting the authorized service without regard to GM's need for a broader service, the Commission took into account the general policy of Section 5(2)(b) against railroad domination or monopoly of motor transport. The Commission concluded that except in unusual circumstances which it did not find present here, Congress did not intend to permit a railroad or its subsidiary to provide motor contract carrier service "broader in scope than its rail operation."

The Commission's action is consistent with the principles laid down in *American Trucking Ass'ns.*



v. *United States*, 355 U.S. 141. There this Court held "that the Congress did not intend the rigid requirement of Section 5(2)(b) to be considered as a limitation on certificates issued under Section 207", but "that the underlying policy of Section 5(2)(b) must not be divorced from proceedings for new certificates under Section 207." In the present case, the Commission concluded that the same principles apply where a rail affiliate applies for a contract carrier permit pursuant to Section 209(b).

In applying the policy of Section 5(2)(b) in this case "as a guiding light, not as a rigid limitation," the Commission took into account not only the peculiar transportation needs of the shipper, but also the circumstance that authorizing PMT to serve GM as a motor contract carrier only to points served by its rail parent would only affect traffic which is now handled by the railroad, while authority to serve non-SP points would have a competitive impact upon other carriers, both rail and motor. Under these circumstances, we contend that the policy underlying Section 5(2)(b) was not frustrated by the Commission's grant of authority to transport as a contract carrier a single commodity for a single shipper to points already served by its rail parent.

## II

Contrary to the appellant's suggestion, the court below did not usurp the Commission's function by making its own independent finding of circumstances which would support a grant of authority to PMT to engage in motor carrier operations without regard

to the restrictive policy underlying Section 5(2)(b). Read in context, that court's reference to "special circumstances" can only mean that it found justification in the evidence for authorizing PMT to perform for GM a specialized contract carrier service restricted to points which are stations on the rail lines of its parent.

### III

The court below correctly held that in determining PMT's applications in 1958, the Commission was bound to take into account the criteria, added to Section 209(b) in 1957, prescribed by Congress to govern the grant or denial of contract carrier permits. *Ziffrin v. United States*, 318 U.S. 73, 78. Contrary to the appellants' apparent suggestion, neither the Commission nor the court below took the position that the addition of such specific criteria was intended to make the policy underlying Section 5(2)(b) inapplicable to the grant or denial of a motor contract carrier permit to a railroad or its affiliate. Indeed, the Commission expressed the contrary view and the court below approved.

### IV

The Commission's grant of motor contract carrier authority to PMT did not offend Section 210 which prohibits any person or affiliated persons from engaging in motor common and motor contract carriage "over the same route or within the same territory" unless the Commission finds that such dual operations will be consistent with the public interest and the national transportation policy.

The Commission considered carefully the possibilities of discrimination which exist when affiliated carriers provide both common and contract carrier service for the same shippers. In granting motor contract carrier authority to PMT, it required PMT to accept conditions prohibiting it from transporting automobiles and trucks under its common carrier certificates. Although the motor common carrier authority of another Southern Pacific subsidiary is limited to Texas and Louisiana, and therefore does not invoke Section 210 because the resulting dual operations are not "over the same route or within the same territory," the Commission nevertheless made as to it the findings required by Section 210. Notwithstanding that Section 210 applies only to the combination of motor common and motor contract carrier operations, the Commission also noted that the grant to PMT would mean that Southern Pacific-PMT could transport outbound GM vehicles in rail, common and motor contract carrier service and inbound parts in both rail and motor common carrier service. It concluded that it could approve such operations in view of such facts as that Southern Pacific-PMT had performed such dual rail and motor service for GM for years without complaint. Also, only competing automotive manufacturers could be prejudiced by such operations, and Ford, the only GM competitor with a plant served by Southern Pacific, has neither complained nor indicated inability to protect its interests. Such circumstances, coupled with the Commission's reservation of power to impose future conditions, provided a rational basis for its treatment of

the dual operations issues. In any event, the appellant motor carriers and associations are without standing to challenge the Commission's application of the provisions of Section 210 for the protection of shippers.

## ARGUMENT

### I

**The Proviso of Section 5(2)(b) of the Interstate Commerce Act, Relating To Rail Acquisitions of Motor Carriers, Did Not Preclude the Commission In the Circumstances of This Case from Authorizing PMT To Transport As a Motor Contract Carrier New Automobiles and Trucks for a Single Shipper To Points Which (With Minor Exceptions) Are Stations On the Railroad Lines of Its Parent, the Southern Pacific Company**

In this case, the Commission has authorized PMT, a wholly owned subsidiary of the Southern Pacific Company, to transport as a motor contract carrier new automobiles and trucks from the Oakland and Los Angeles plants of General Motors Corporation to points which (with few exceptions) are stations on the parent railroad. The Commission acted pursuant to Section 209(b) of the Interstate Commerce Act which provides generally that "Subject to Section 210" a contract carrier permit may be issued if the Commission finds "that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared by this Act." Section 209(b) was amended in 1957 to specify various factors which the Commission must consider "in determining

whether issuance of a permit will be consistent with the public interest and the national transportation policy."

The appellants contend that as a matter of law the Commission is precluded from authorizing PMT to perform motor contract carrier service between GM's California plants and points in other states which are stations on the parent railroad, unless such service is limited to "auxiliary and supplementary" service, or except in "special circumstances" which the Commission did not find to be present. The sole statutory basis for this contention is the proviso of Section 5(2)(b) that before the Commission may authorize a rail affiliate to *acquire* an existing motor carrier operation, it must find that the transaction will enable the railroad to use "service by motor vehicle to public advantage in its operations and will not unduly restrain competition." We submit that the contention is without merit.

The Commission found, and it is not disputed, that GM needs motor transportation for the delivery of new automobiles and trucks from its three plants here involved in order to compete with other automotive manufacturers (R. 19, 20, 22, 26).

The nature of GM's need for motor transportation for its new automobiles and trucks is peculiar to the automotive manufacturing industry. Automobiles are manufactured in many combinations of model, color, upholstery and special equipment, e.g. power brakes, in large part upon specific customers' orders (R. 208-209). Most shipments to dealers involve such combinations. Manufacturers can avoid either plant con-



gestion or huge storage problems only by carefully synchronizing the flow of cars off the assembly lines with the outbound transportation of cars to dealers. See, e.g., *Western Auto Shippers Extension of Operations*, 3 M.C.C. 173, 175 (1937); *Barton-Robison Convoy Co., Inc. Extension*, 19 M.C.C. 629, 632-633 (1939). The automotive manufacturers generally find that such essential coordination of production with outbound transportation can be achieved only by utilizing one or a few motor carriers who are able and willing to gear their operations to the manufacturer's needs. While some automotive manufacturers prefer to utilize motor common carriers, others prefer to use motor contract carriers. However, as the appellants suggest (App. Br. 31, fn. 18), "there is little distinction between motor common and contract carriage of automobiles," by reason of the specialized nature of the service and the extremely limited class of shippers (particularly in initial movements of new vehicles). See *Bush Construction Co., Inc. v. Platten*, 48 M.C.C. 155, 162 (1948).

The Commission has long recognized these transportation problems of GM and other automotive manufacturers. Thus, in *New Automobiles in Interstate Commerce*, 259 I.C.C. 475, 490-491 (1945):

Ford and General Motors ship in great volume by both rail and motor carrier. Ford uses principally common carriers and only a few contract carriers, most of which serve no other producers to any important extent, if at all. General Motors uses both common and contract carriers to a great extent, although its Chevrolet division

employs contract carriers exclusively. Formerly, it permitted its dealers to retain control of transportation of automobiles. The dealers engaged numerous motor carriers, some irresponsible and inefficiently operated. As a result, the shipping facilities at Chevrolet's plants became congested by the carriers' vehicles, causing confusion and unnecessary expense, and the transportation was often unsatisfactory. To eliminate these conditions, General Motors, in 1934, adopted the policy of selling all its automobiles on a delivered basis and controlling the transportation. Chevrolet selected and helped develop seven well-organized and efficiently operated contract carriers and has since used them exclusively for its truck-away transportation from all assembling plants. They transport only for General Motors and are employed by it for all truck-away transportation of Buicks, Oldsmobiles, and Pontiacs from Linden [N. J.]. Each of these carriers serves a different plant and has its own territory which does not generally overlap that of the others. \* \* \*

The contract carriers cooperate closely with General Motors, almost as if they were departments of its distributing organization. \* \* \*

Similarly, in *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M.C.C. 473, 476-477 (1954):

General Motors prefers the service of a separate contract motor carrier at its plants which produce Buick, Oldsmobile, and Pontiac automobiles, including the one at Arlington, and Woods has therefore set up the separate company, Texas Transports, in order to keep the business at Arlington separate from the operations of United

and Transports. General Motors desires to retain control over the transportation of its vehicles moving from Arlington, and it will pay all transportation charges. It asserts that the service of a contract carrier which can devote its time and equipment exclusively to its transportation needs is a necessity for the efficient operation of the new plant; that it thereby is able to effect excellent coordination in fitting transportation equipment to production and move its automobiles as soon as produced; and that prompt movements are necessary because of limited storage space at the new plant. It considers a contract carrier to be an integral part of its assembly and distribution operation because the use of such a service permits it to effect deliveries to dealers who sell in a highly competitive market where delays cause loss of sales. It does not wish to use the services of common carriers by motor vehicle. \* \* \*

Under the contract between General Motors and Texas Transports the latter's equipment would be devoted exclusively to the BOP division at Arlington, and its motor-carrier operations would be fitted into the distribution program at this plant. The trailers used by the carrier would be designed for the transportation of Buick, Oldsmobile, and Pontiac automobiles, and it would receive advance information with respect to changes required to be made in the trailers for efficient handling of new models. A forecast of monthly production at the plant would be submitted to Texas Transports to enable it to provide the necessary equipment for the prompt movement of automobiles as they come

from the assembly line. Daily communication would be maintained between the plant and Texas Transports, and it is expected that switch-board connections at the plant would include service to terminal facilities of the motor carrier. \* \* \*

For similar recognition by the Commission of the peculiar needs of other automotive manufacturers and their dealers, see *Melton Contract Carrier Application*, 51 M.C.C. 117 (1949) (Kaiser-Frazer); *Hadley Extension of Operations*, 46 M.C.C. 946 (1946) (Ford).

In the instant proceedings before the Commission, GM officials testified as to these factors at the plants here involved (R. 113-115; 129-132; 212-215; 272-276; 325, 333).

In the instant case, the Commission found that PMT "presently is providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California", as well as with limited interstate motor contract carrier service (R. 22). As the appellants point out (App. br. p. 4, fn. 4), "Of total movements by PMT in 1955 of 175,951 vehicles, only 6,100, or less than 3.5% moved interstate."<sup>10</sup> The great bulk of the output of GM's California plants is shipped to

<sup>10</sup> The record references, R. 468-469, given by the appellants, show 1955 figures for Oakland and 1956 figures for Raymer. In 1956 the South Gate plant produced 132,551 automobiles, of which 102,901 units, or 88%, were delivered within California (R. 322). PMT transported 65% of that intrastate traffic (ibid).

dealers in California. Since California has approximately three times the combined population of Arizona, Nevada, New Mexico, Oregon and Utah (the destination states involved in the grant of authority to PMT), to say nothing of only the points in those states which are stations on the Southern Pacific railroad, we may assume that most of the output of the GM plants here involved will continue to be shipped to points in California. In other words, PMT's interstate contract service for GM is the tail of a much larger dog.

The Commission found that in the course of rendering this pre-existing service since 1935, PMT established receiving yards immediately adjacent to the storage yards of GM's plants at Raymer, Oakland and South Gate, "and its motor operations [are] fully integrated with shipper's manufacturing operations at those points" (R. 22). The physical relationship of PMT's facilities to the GM plants is illustrated by the maps and photographs comprising Exhibits 4-6, R. 474-479 (Oakland), Exhibits 9-11, R. 488-493 (Raymer), and Exhibits 12-14, R. 494-499 (South Gate).

PMT's prior transportation of new automobiles and trucks for GM has been as a contract carrier (R. 20). In the instant application proceeding, the Commission noted that the "Applicant proposes to render a service only for General Motors, the only shipper it presently serves, and to assign its equipment to the exclusive use of that shipper" (R. 19). The Commission concluded that "Clearly its proposed



service will be that of a contract carrier" (R. 19).<sup>11</sup>

We do not understand the appellants to deny (1) that GM needs motor transportation, (2) that motor contract carrier service is appropriate to meet that shipper's needs, or that (3) PMT's prior and proposed service to GM is that of a contract carrier. Rather, their sole contention is that PMT, as an affiliate of Southern Pacific, should not be allowed to perform motor contract carrier service for GM.

Here, PMT, at the request of GM, applied for authority to transport new automobiles and trucks from GM's three California plants to all points in Arizona, Idaho, Montana (only from South Gate), Nevada, New Mexico (not from South Gate), Oregon, Utah and Washington. Although, the Commission did not so find specifically, it is obvious that GM's need for PMT's specialized and exclusive service, integrated with its assembly lines, was as great for destinations which are not rail stations on the Southern Pacific as

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<sup>11</sup> Section 203(a)(15), as amended on August 22, 1957, defines "contract carrier" as

\* \* \* any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

for those which are. If PMT were an independent motor carrier (i.e., non-rail-affiliated), both the present record and the Commission's precedents would have supported a grant to PMT of all the contract carrier authority for which it had applied.

However, after referring to the policy underlying Section 5(2)(b) and the National Transportation Policy, the Commission concluded that "we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation" (R. 31). Thereupon, the Commission determined that (R. 31):

In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted reserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest.

Accordingly, the Commission authorized PMT to transport as a contract carrier new automobiles and trucks from GM's three plants to points in Oregon, Nevada, Utah, Arizona and New Mexico which are stations on the Southern Pacific railroad (plus the

off-rail points of Austin, Tonopah and Yerington in Nevada) (R. 33, 39). The Commission denied PMT's application to serve points in Washington, Montana and Idaho.

Section 5(2)(b), authorizing the Commission to approve carrier mergers or the acquisition of control of one carrier by another carrier, provides that the Commission shall not authorize a railroad or its affiliate *to acquire control, etc.*, of a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such [railroad] to use service by motor vehicle to public advantage in its operation and will not unduly restrain competition." On its face, Section 5(2)(b) has no application to the authorization of *new or additional* contract carrier authority, just as nothing in Section 209(b) suggests that there is to be read into it the restrictions of Section 5(2)(b) upon the acquisition by a railroad or its affiliate of *existing* motor carrier operating rights and properties.

However, in a series of cases, this Court has sustained the Commission's view as to the meaning of the proviso of Section 5(2)(b) and its relationship to Section 207, which governs the issuance of motor *common* carrier certificates of public convenience and necessity. In the lead case, *United States v. Rock Island Motor Transit Co.*, 340 U.S. 419, this Court upheld the Commission's power under Section 5(2)(b) to subject a rail affiliate's acquisition of an existing motor carrier to conditions restricting the motor carrier operations to service auxiliary to or supple-

mental of the railroad's operations.<sup>12</sup> During the same Term, this Court upheld the Commission's power to impose such conditions in authorizing, pursuant to Section 207, a rail affiliate to engage in *new or additional* motor common carrier operations. *United States v. Texas & Pacific Motor Transport Co.*, 340 U.S. 450.

In 1957, *American Trucking Assn's. v. United States*, 355 U.S. 141, involved the question of whether the proviso of Section 5(2)(b) *must* be read into Section 207 as a rigid prohibition against the Commission authorizing a rail affiliate to engage in new or additional motor common carrier service without such auxiliary and supplemental service restrictions. In that case, the Commission had held that while it was obliged to take into account the policy of the proviso in administering Section 207, the proviso could not be imported into Section 207 as rigidly precluding the Commission in any and all circumstances from authorizing a rail affiliate to engage in "unrestricted" motor common carrier operations.

<sup>12</sup> The conditions customarily imposed upon motor common carrier operations by a railroad or its affiliate may be summarized as follows:

- (1) motor service to be performed only at rail rates and on rail bills of lading; (2) service to be performed only to points which are stations on the railroad; (3) the local character of the motor service to be insured by the designation of key points between or through which shipments may not be transported by motor; (4) contracts between railroad and motor carrier affiliate to be subject to revision by the Commission; and (5) a reservation to the Commission of power to impose further conditions.

In sustaining the Commission's action under Section 207 in the *American Trucking Assn's.* case, this Court reached conclusions which are equally applicable to the authorization of motor contract carrier operations by a rail affiliate under Section 209(b), as follows (355 U.S. at pp. 149-150, 151-152, 154):

Section 207, which defines the showing on which issuance of a certificate of public convenience and necessity is predicated, makes no reference to the phrase "service . . . in its operations" used in § 5(2) (b), nor is there any language even suggesting a mandatory limitation to service which is auxiliary or supplementary.

The legislative history of the Motor Carrier Act of 1935 gives no indication that § 213(a) (1), the predecessor of § 5(2) (b), was to be considered a limitation on applications under § 207.

\* \* \*

In interpreting § 207, the Commission has accepted the policy of § 5(2) (b) as a guiding light, not as a rigid limitation. While it has applied auxiliary and supplementary restrictions in many § 207 proceedings, the Commission has occasionally issued certificates to railroad subsidiaries without the restrictions where "special circumstances" prevail, namely, where unrestricted operations by the rail-owned carrier are found on specific facts and circumstances to be in the public interest. \* \* \*

We conclude, therefore, that the Congress did not intend the rigid requirement of § 5(2) (b) to be considered as a limitation on certificates issued under § 207.

\* \* \*



We repeat, as was said in those cases, that the underlying policy of § 5(2)(b) must not be divorced from proceedings for new certificates under § 207. Indeed, the Commission must take "cognizance" of the National Transportation Policy and apply the Act "as a whole." But, for reasons we have stated, we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a § 207 proceeding.

\* \* \* The Commission has retained jurisdiction "to impose in the future whatever restrictions or conditions, if any, appear necessary in the public interest by reason of material changes in conditions or circumstances surrounding applicant's operations in relation to those of competing motor carriers." 63 M.C.C. at 108. This reservation gives it continuing jurisdiction to make certain that the unlimited certificate issued here does not operate to defeat the National Transportation Policy.

Prior to the instant case, the courts had not considered the relationship of the proviso of Section 5(2)(b) to the grant of contract carrier permits pursuant to Section 209(b). However, in its report in this case, after quoting and discussing this Court's decision in the *American Trucking Assn's.* case, the Commission stated that "we think that undoubtedly the same principle applies here where contract carrier permits are sought and in reaching the conclusions above indicated, namely, that some authority should

be granted in each proceeding, we have in fact given due consideration to the National Transportation Policy and to the principles which underlie Section 5(2)(b)" (R. 29).

We agree with the appellants that the proviso of Section 5(2)(b) reflects a Congressional policy against railroad monopolization or domination of motor transportation. However, the requirement of the proviso as to *acquisitions* reaches the grant of new contract carrier authority under Section 209 "as a guiding light, not as a rigid limitation" (*American Trucking Assn's. v. United States*, 355 U.S. at 149). At the same time, "the underlying policy of Section 5(2)(b) must not be divorced from proceedings for new [permits] under Section [209]" (ibid. at 151).

As a "guiding light" or as an "underlying policy", the anti-monopoly objectives of the proviso of Section 5(2)(b) do not import in Section 209 (any more than they did into Section 207) the five "auxiliary and supplementary" conditions which, as this Court held in *United States v. Rock Island Motor Transit Co.*, *supra*, the Commission is empowered to impose. Indeed, in that case, this Court noted that "the words 'auxiliary to or supplemental of' are not taken from the Act. There is no such specific limitation for railroad operation of motor carriers" (at p. 437). And the Court added that "Different conditions are required under different circumstances to maintain the balance between rail and motor carriage" (at p. 443).<sup>13</sup> Clearly, the imposition of varying conditions

<sup>13</sup> Between 1948 and 1958, the railroads' share of inter-city traffic, measured in ton-miles, declined from 64.39% to

to different circumstances is "an exercise of the discretionary and supervisory power with which Congress has endowed the Commission" (at p. 442).

Thus, contrary to the appellants' contention, the Commission was under no compulsion in the present case to impose upon PMT's performance of specialized contract carrier transportation of a single commodity, for a single shipper, the same five auxiliary and supplemental service restrictions which it usually imposes upon the common carriage of general commodities by a rail-controlled motor carrier. The Commission could not ignore the anti-monopoly purpose of Section 5(2)(b), but it had broad discretion as to how to effectuate it.

In determining how to effectuate the policy of Section 5(2)(b) in the instant case, the Commission was bound to take into account the peculiar transportation needs of the shipper. Here, GM was already obtaining from PMT intrastate motor contract carrier service to California points for most of the output of its California plants. Obviously, it would be much more convenient for GM to obtain interstate motor service for the delivery of the balance of that output from PMT, which had already fully coordinated its operations to GM's production and delivery schedules. As this Court held in *American Trucking Assn's. v. United States*, *supra*, nothing in the policy of Section 5(2)(b) suggests that such shipper needs must be

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6.31%, while the motor carriers' share increased from 7.72% to 20.47%, Annual Reports of the Interstate Commerce Commission. 1950, p. 22; 1959, p. 11.

wholly ignored in determining to what extent a rail affiliate may be authorized to engage in motor transportation. At the same time, the Commission held that General Motors' needs and its unwillingness to utilize the services of existing motor carriers to non-rail points would not justify a grant of authority to PMT to serve areas unrelated to the service area of its rail parent (R. 27).

In addition, the Commission considered the effect of a grant to PMT upon competing carriers. It noted that "Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse effect on existing motor carriers" (R. 20). Clearly, the competitive impact of PMT obtaining traffic previously handled by its rail parent is quite different from obtaining traffic which has been handled by independent motor carriers. The Commission also noted that to permit PMT to serve points which are not already served by its rail parent would have a heavy competitive impact in "territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service."<sup>14</sup> (R. 27). We submit, therefore, that there was a rational basis for the Commission's conclusion (R. 28) that "a grant of authority to applicant to serve only those points which are stations on the lines of

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<sup>14</sup> The extent of the rail joint-line movement of traffic originating in the three GM plants here involved is described in the Commission's report (R. 23-24).

the Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers."

Thus, the Commission determined that the policy of Section 5(2)(b) would be satisfied by restricting PMT's motor contract carrier service to points already served by its rail parent, and by reserving to itself "the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest." The restriction of service to points which are served by the railroad is one of the conditions which this Court held in the *Rock Island Motor Transit Co.* case that the Commission was empowered to impose. It is obviously relevant and effective in effectuating the underlying policy of Section 5(2)(b). Moreover, the practical significance of the reservation of power to impose future restrictions upon the contract carrier operations which PMT was authorized to perform, was illustrated in *United States v. Rock Island Motor Transit Co.*, *supra*. Such a condition was specifically recognized by this Court in *American Trucking Assn's v. United States*, 355 U.S. at 152 and 154, as giving the Commission "continuing jurisdiction to make certain that the unlimited certificate issued here does not operate to defeat the National Transportation Policy."



## II

**The Court Below Did Not Err In Characterizing As "Special Circumstances," the Facts Relating To the Shipper's Need for Contract Carrier Service By PMT**

The appellants attack the decision of the three-judge court as exceeding "the limits of judicial review of agency action" (App. br. pp. 36-41). This attack is based upon the statement in the lower court's opinion (R. 81) that:

Thus, although the Commission found an "absence of unusual conditions" which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM.

The precise contention is that the court below erred by itself making a finding of "special circumstances," to support a grant of unrestricted contract carrier authority to PMT, which the Commission had refused to make. The contention is without substance.

It is clear that the appellants' present contention arises out of their insistence that the grant of authority to PMT to serve only points which are rail stations on the Southern Pacific is an "unrestricted" authority which can be granted only in "unusual circumstances". Conversely, the Commission treated the grant as restricted in deference to the policy underlying the proviso of Section 5(2)(b).

Admittedly, the Commission found (R. 31) that there were not present such unusual or special cir-

cumstances as would justify a grant to PMT of contract carrier authority to serve all points in Washington, Oregon, Idaho, Montana, Nevada, Utah, Arizona and New Mexico—the seven-state (plus California) distribution area for the GM plants here involved. Looking only to the transportation needs of the shipper, it will hardly be denied that the shipper's need for motor contract carrier service to non-rail points was at least as great as its need for service to rail points. Indeed, applying only the criteria of Section 209(b), which normally are the exclusive standards governing the grant or denial of contract carrier permits, it probably would have been irrational or arbitrary to have authorized PMT to serve only the rail points, without regard to the same showing of shipper's need for service to both rail and non-rail points.

Here, the Commission plainly stated that the obvious convenience to General Motors of a grant of authority to PMT to serve the entire distribution area for its California plants, did not constitute such unusual circumstances as would justify authorizing PMT to render service beyond the service area of its rail parent. In so holding, the Commission subordinated the shipper's convenience to the underlying policy of the proviso of Section 5(2)(b) against rail monopolization of motor transportation.

The portion of the lower court's opinion quoted above states that "there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM." Read fairly and in context, we sub-

mit that the three-judge court was not usurping the Commission's function by making an independent finding of unusual circumstances justifying a grant of unrestricted contract carrier authority measured only by the usual standards of shipper need. Rather, we think it clear that the court's use of the phrase "special circumstances" was simply its conclusion that the evidence as to GM's special transportation needs and the competitive effects of a grant to PMT justified the Commission's action in authorizing PMT to provide motor contract carrier service only to points served by its parent railroad.

### III

#### **The Grant of Contract Carrier Authority To PMT Was Not Based By the Commission, Nor Sustained By the Three Judge Court, Upon An Erroneous Interpretation of Section 209(b)**

Section 209(b) was amended, effective August 22, 1957, to provide, inter alia, that "In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements." We have difficulty in following the appellants' contention (App. br. p. 41) "that the District Court erred in holding that the

amendment to Section 209(b) has any bearing upon the issues here."

We agree with appellants that "The primary purpose of the 1957 amendments was to overcome the effect of this Court's decision in *United States v. Contract Steel Carriers*, 350 U.S. 409." However, it is equally true that the 1957 amendments also added to Section 209(b) the above-quoted criteria which the Commission must consider in granting or denying a contract carrier permit. As the court below stated (R. 79) "whatever may have been the original reason for instituting the legislation which culminated in the 1957 amendment, Section 209(b), as it read at the time the Commission issued this order, clearly directed consideration by the Commission of certain specific criteria in applying public interest and the national transportation policy to authorization of contract carrier permits."<sup>15</sup> The Commission's order was entered on September 9, 1958, after the 1957 amendments to Section 209(b) became effective. It is settled that the Commission was required to comply with Section 209(b) as it read on the date of its decision. *Ziffrin v. United States*, 318 U.S. 73, 78.

Neither the Commission nor (contrary to the appellants' suggestion) the court below even suggested that the enactment of the specific criteria in Section

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<sup>15</sup> The court below found, and it is not denied here, that "The order here challenged shows on its face that the Commission did consider those criteria, making findings with respect to each of them" (R. 79).

209(b) was intended to "divorce from proceedings for new" permits under Section 209 the underlying policy of Section 5(2)(b). Rather, the Commission specifically held equally applicable to contract carrier applications under Section 209 the principles of *American Trucking Ass'n. v. United States, supra*, namely, "that the Congress did not intend the rigid requirement of Section 5(2)(b) to be considered as a limitation on certificates issued under Section 207", and "that the underlying policy of Section 5(2)(b) must not be divorced from proceedings for new certificates under section 207" (R. 29). And the court below specifically approved the Commission's view that where a rail affiliate applies for a contract carrier permit, it must take into account the policy underlying the proviso of Section 5(2)(b) as well as the specific criteria of Section 209(b) applicable to all proceedings for contract carrier permits (R. 82).

#### IV

#### **The Commission's Action Is Consistent With the Dual Operations Provisions of Section 210 of the Interstate Commerce Act**

Section 210 of the Interstate Commerce Act provides that "Unless, for good cause shown, the Commission shall find, or shall have found that both a [common carrier] certificate and [contract carrier] permit may be so held consistently with the public interest and the national transportation policy declared in this Act—" no person (or persons in a control relationship) shall hold both a contract carrier permit and a common carrier certificate "for the



transportation of property by motor vehicle over the same route or within the same territory." The appellants contend that the instant grant of contract carrier authority to PMT violates Section 210 because of (1) PMT's operations as a common carrier in the same territory, (2) the common carrier operations of Southern Pacific Transport Company,<sup>16</sup> another subsidiary of the Southern Pacific Company, in Texas and Louisiana, and (3) the rail operations of PMT's rail parent. The Commission's extensive findings and discussion with respect to the appellants' contentions under Section 210 are found in its consolidated report on oral argument (R. 30-33) and in its prior report on one of the applications (R. 58-60) which was adopted in this respect in the later report (R. 31).

At the outset, it should be noted that Section 210 is not an absolute prohibition against the same person or affiliated persons performing both common and contract carrier service over the same route or within the same territory. Rather, such dual operations are permissible if approved by the Commission. As stated by the Chairman of the Senate Committee on Interstate and Foreign Commerce when the Motor Carrier Act was enacted in 1935,

\* \* \* There are instances in which both types of operation [common and contract carriage] can advantageously be conducted by the same operator and without prejudice to the public interests,

<sup>16</sup> The scope of this carrier's operations is described in the Commission's report (R. 31-32).

but the possibility of abuses developing makes it advisable to give the Commission the power to pass on all cases in which it is proposed to combine the two types of operation. (79 Cong. Record 5654).

The potential abuse involved in such dual operations is that where the same carrier provides both common and contract carrier service for the same shippers, it may charge some its common carrier rates while serving others at lower contract rates, a situation which may produce discrimination. *Dakota Transportation, Inc., Common Carrier Application*, 3 M.C.C. 621, 631 (1937).

In the present case, the Commission made the findings required by Section 210, namely, "that the holding by applicant of the permits granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common carrier operations in the same territory, and the holding by Southern Pacific Transport Company of the certificates heretofore issued to it, will be consistent with the public interest and the national transportation policy" (R. 33). We submit that there was a rational basis for this finding.

As regards the possibility of PMT transporting new automobiles and trucks both as a common and as a contract carrier, the Commission noted in its prior report (R. 58) that "Most of the common carrier authority held by applicant is restricted against the transportation of automobiles and trucks, either specifically, or in the form of a restriction against the transportation of commodities requiring special

equipment." Nevertheless, in its later report (R. 32) the Commission provided that "our grants here will be made subject to the condition that applicant request in writing the imposition of a condition against the transportation of automobiles and trucks in its outstanding certificates \* \* \* which are not specifically restricted against such transportation."<sup>17</sup> PMT has complied with this condition. Thus, PMT is precluded from transporting automobiles and trucks in the dual operations contemplated by Section 210.

As noted above, the Commission also made the findings required by Section 210 as to the common carrier operations of Southern Pacific Motor Transport Company in Texas and Louisiana. However, since the company's common carrier operations are not conducted "over the same route or within the same territory" as the PMT contract carrier operations here involved, no dual operations issue under

<sup>17</sup> The Commission has similarly conditioned the grant of certificates or permits in deference to Section 210 in a number of cases. See, e.g. *Martin Com. Carr. Application*, 10 M.C.C. 657, 662 (1938); *Kane Tfr. Co. Com. Carr. Application*, 12 M.C.C. 404, 407-8 (1939); *H. B. Church Truck Serv. Co. Com. Carr. Application*, 27 M.C.C. 191, 202 (1940); *Eastern Tptn. Co., Inc., Cont. Carr. Applic.*, 34 M.C.C. 389, 393-4 (1942); *DeVenne-Control-Allmen Tfr. & Moving Co.*, 65 M.C.C. 661, 664-5 (1956); *United Parcel Serv. Inc., Com. Carr. Applic.*, 68 M.C.C. 199, 205-6 (1956); *Cooper—Purchase—Transport Trkg Co.*, 70 M.C.C. 561, 562, 565 (1957); *Miller Transport Co., Inc. Extension—Groceries*, 72 M.C.C. 486 (1957); *Stang Cont. Carr. Applic.*, 73 M.C.C. 513, 518-9 (1957); and *Kane Tfr. Co., Extension—Groceries*, 73 M.C.C. 569, 571-3 (1957).

Section 210 is presented. See *Columbia Motor Transport Co. Common Carrier Application*, 46 M.C.C. 69, 93 (1946).

As the Commission noted in its prior report (R. 58), "the provisions of Section 210 of the Act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle." In other words the Commission need not make the findings required by Section 210 where the dual operations consist of motor contract carrier and rail common carrier operations. However, the Commission added (R. 58) that "even without the statutory requirements, we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the Act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed." And the Commission identified the problem as whether Southern Pacific-PMT should be permitted to serve GM as a motor contract and rail common carrier of new automobiles and trucks and as a common carrier both by rail and motor of general freight (i.e., inbound automotive parts) (R. 59).

In its prior report (R. 60), the Commission stated the reasons for its conclusion that "we properly may approve the resultant operations." It noted that "Applicant's past satisfactory performance in a

dual capacity has been without criticism." This is particularly significant in that Southern Pacific-PMT had for years performed such dual rail and motor service for GM. Next, the Commission pointed out that PMT would be serving only a single shipper in the contract carriage of automobiles. In other words, neither PMT nor Southern Pacific-PMT is in a position to provide both common and contract carrier service to a substantial number of shippers between whom it might practice the type of discrimination at which Section 210 is directed. Indeed, it was inherent in the instant situation that only competing automotive manufacturers could be injured by the dual operations of Southern Pacific-PMT in serving GM in either the outbound transportation of assembled automobiles and trucks or the inbound transportation of parts. While the appellants faintly suggest (App. br. p. 52) that Southern Pacific "could give preference to GM" over the Ford plant at Milpitas (near San Francisco), the past record of no discrimination, plus the ability of the Ford Motor Company to protect itself against such treatment, relegates this suggestion to sheer speculation which did not require the Commission to forbid such dual operations. Ford, the only other GM competitor which is served by Southern Pacific (R. 468), has not complained. These circumstances, coupled with its findings as to GM's need for the authorized contract carrier service, clearly provided a rational basis for the Commission's treatment of the dual operations issues. This basis was reinforced by the Commission's reservation of power (R. 32) "to reconsider this issue at any



future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference." See *American Trucking Assn's v. United States*, 355 U.S. at 154.

Finally, we suggest that the appellant motor carriers and associations are wholly without standing to challenge the Commission's application of Section 210, which is directed at the protection of shippers, rather than competing motor carriers.

### CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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April 1960

FILED

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JAMES R. BROWNING, Clerk

# In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 74

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
et al.,

*Appellants,*

vs.

UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, et al.

Appeal from the United States District Court  
for the District of Columbia

**Reply to Memorandum for the United States by  
Appellee Pacific Motor Trucking Company**

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# In the Supreme Court of the United States

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VS.

UNITED STATES OF AMERICA, INTERSTATE  
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Appeal from the United States District Court  
for the District of Columbia

## Reply to Memorandum for the United States by Appellee Pacific Motor Trucking Company

This brief submitted by appellee Pacific Motor Trucking Company (herein referred to as PMT), is in reply to the Memorandum for the United States prepared by the Solicitor General, which was received by counsel for PMT on April 29, 1960. Inasmuch as the Government has rather surprisingly changed its position from the neutral position it adopted before the District Court (R. 67, 74), and inasmuch as the Government's Memorandum, though it supports appellants' position, was not filed within the time limits applicable to appellants' brief and was filed at or



after the filing of appellees' briefs, appellee PMT assumes that under Rule 41 of the rules of this Court it has the right to file this reply thereto up until the case is called for hearing.

### ARGUMENT

- I. **The Solicitor General's Argument Amounts to the Contention That in the Absence of the Identical "Special Circumstances" or "Unusual Conditions" in the American Trucking Associations Case<sup>1</sup> the Commission Has No Power to Grant What the Solicitor General Describes as "Unrestricted Authority" in a Contract Carrier Permit to a Motor Carrier Subsidiary of a Railroad.**

That the above is a fair statement of the Solicitor General's contentions is indicated by the following excerpts from his Memorandum:

(p. 4):

"\* \* \* The special circumstances in that case [referring to the *American Trucking Associations* case] were that the 'other carriers frequently failed to handle such traffic, and gave service inferior to that of Motor Transit when they did operate' (p. 153)

\* \* \*

In the present case, we find no such 'special circumstances' which justify the grant of the contract carriage authority. \* \* \*

(p. 6):

"\* \* \* The end result is that, within the wide geographic bounds prescribed, PMT, despite the absence of any showing of unusual conditions' (R. 31), has been awarded unrestricted authority to transport GM's cars and trucks. \* \* \*

(p. 8):

"Unless there are 'special circumstances' which furnish compelling reasons for granting a permit for motor carriage to a railroad subsidiary, the policy of

1. *American Trucking Associations v. United States*, 355 U.S. 141 (1957).

the Act, as set forth in the National Transportation Policy as well as Section 5(2)(b), is against any railroad-controlled motor carriage not connected with the railroad's own operations. This objective is not met by limiting a railroad subsidiary to part of the independent operating authority it seeks. The only circumstances advanced in the Commission's report to justify operations by PMT independent of the SP's rail operations—that the railroad previously carried the traffic and GM had stated it would not give it to the protestants—are not, we believe, the type of 'special circumstances' contemplated by this Court in *American Trucking Assns. v. United States, supra*."

The above argument clearly can have no application to so much of the involved authority as was herein granted in the Sub 35 proceeding (authority to serve from Oakland, California, to Austin, Tonopah and Yerington, Nevada, points not on the lines of Southern Pacific Company). Thus, as pointed out at page 37 of our opening brief, "special circumstances" of the identical type involved in the *American Trucking Associations* case existed there, i.e., unavailability of adequate service by independent carriers.

Appellees, of course, strenuously contest the argument of appellants, in which the Solicitor General has now joined, that the Commission has here granted unrestricted authority as to the remainder of the operating permits granted. Our principal brief at pages 27-36 points out in great detail that the restriction of motor carrier service to points on the lines of the rail parent here imposed has always been regarded by the Commission and this Court as the basic "auxiliary and supplemental" restriction.

But for purposes of this brief appellee will assume arguendo the correctness of the Solicitor General's position that the Commission did grant PMT "unrestricted authority", and will further assume that the identical "spe

cial circumstances" disclosed in the *American Trucking Associations* case did not exist. It will then be the purpose of this brief to show that the Commission's grant of such authority here was, nevertheless, within the Commission's power, because: (a) the Commission's right to grant unrestricted authority, as an exception to the usual rule, is not properly to be confined to a situation where the identical "special circumstances" of the *American Trucking Associations* case appear, either in the light of the decisions of the Commission or this Court dealing with common motor carriers, or the language and legislative history of the 1957 amendment to section 209(b), dealing with contract carrier permits, but, instead, exists whenever the Commission finds on the special facts of the particular case that following the exception will be in the public interest; and (b) in the present case the Commission found on other rationally supporting special facts that the grant of "unrestricted authority" was in the public interest.

**II. The Commission's Power to Grant "Unrestricted Authority" Is Not to Be Confined to the Precise "Special Circumstances" of the American Trucking Associations Case but Exists Whenever the "Special Circumstances" of the Particular Case Justify It in the Public Interest.**

In *Rock Island M. Transit Co.—Purchase—White Line M. Frt.*, 40 M.C.C. 457, 473 (1946), the Commission expressed its views with respect to the granting of unrestricted motor common carrier authority to rail subsidiaries as follows:

"It is our opinion, originally indicated in the *Kansas City Southern* case and confirmed by nearly a decade of experience in motor-carrier regulations, that the preservation of the inherent advantages of motor-carrier service and of healthy competition between railroads and motor carriers and the promotion of

economical and efficient transportation service by all modes of transportation and of sound conditions in the transportation and among the several carriers, in short the accomplishment of the purposes forming the national transportation policy, require that, except where unusual circumstances prevail, every grant to a railroad or to a railroad affiliate of authority to operate as a common carrier by motor vehicle or to acquire such authority by purchase or otherwise should be so conditioned as definitely to limit the future service by motor vehicle to that which is auxiliary to, or supplemental of, train service.

We appreciate, of course, that section 207, unlike section 5, does not require of a railroad, undertaking to prove that public convenience and necessity require a motor service which it proposes, any greater measure of proof than is required of any other applicant. But this does not mean that it is as easy for one applicant, as for another, to prove need for a proposed service or that this Commission considering an application by a railroad for authority to perform an all-motor service, not in aid of its rail service but in competition therewith and with other motor carriers, can ignore the circumstance that such applicant is a railroad whose operation as proposed would ordinarily be inconsistent with the principles underlying the national transportation policy. In other words, a railroad applicant for authority to operate as a common carrier by motor vehicle, though required to do no more than prove, as any other applicant, that its service is required by public convenience and necessity, has a special burden, not by reason of any attitude or action on our part, but by reason of the very circumstance that it is a railroad. *Where it fails to show special circumstances negating any disadvantage to the public from this fact, a grant of authority to supply motor service other than service auxiliary to, or supplemental of, train service is not justified.* (Emphasis added.)

This Court in reviewing that decision not only cited the last paragraph of the above quotation with apparent approval but went on to emphasize the Commission's broad and flexible power to grant certificates without all the usual restrictions, thus (*United States v. Rock Island Co.*, 340 U.S. 419, 428-429, 442 (1951)):

"\* \* \* Those divergences, however, are an exercise of the discretionary and supervisory power with which Congress has endowed the Commission. It is because Congress could not deal with the multitudinous and variable situations that arise that the Commission was given authority to adjust services within the limits of the Motor Carrier Act. § 208."

Again, in *Rock Island Motor Transit Co. Com. Car. Application*, 63 M.C.C. 91, 102, 108 (1954), the Commission reviewed its right to depart from its usual policy of imposing restrictions in occasional cases, in these words:

"The main purpose for the policy of imposing the five above-quoted restrictions, or modifications thereof, was to prevent the railroads from acquiring motor operations through affiliates and using them in such a manner as to unduly restrain competition of independently operated motor carriers. This policy was and is sound and should be relaxed only where the circumstances clearly establish (1) that the grant of authority has not resulted and probably will not result in the undue restraint of competition, and (2) that the public interest requires the proposed operation, which the authorized independent motor carriers have not furnished, except where it suited their convenience." (p. 102)

"The findings hereinafter made are not to be construed as an abrogation of the policy established in *Kansas City S. Transport Co., Inc., Com. Car. Application, supra*. They represent an exception to that



policy justified by the evidence in this proceeding. In other words, such findings do not establish a precedent. *Each case of this character must be determined upon the facts and circumstances disclosed by the evidence.*" (Emphasis added.) (p. 108)

Finally, in *American Trucking Associations v. United States*, *supra*, 355 U.S. 141, 149-150, 152, in affirming the Commission's action in granting unrestricted authority in that case this Court approved the Commission's above language and declared further:

"In interpreting § 207, the Commission has accepted the policy of § 5(2)(b) as a guiding light, not as a rigid limitation. While it has applied auxiliary and supplementary restrictions in many § 207 proceedings, the Commission has occasionally issued certificates to railroad subsidiaries without the restrictions where 'special circumstances' prevail, namely, where unrestricted operations by the rail-owned carrier are found on specific facts and circumstances to be in the public interest. . . .

"We conclude, therefore, that the Congress did not intend the rigid requirement of § 5(2)(b) to be considered as a limitation on certificates issued under § 207." (pp. 149-150)

" . . . But, for reasons we have stated, we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a § 207 proceeding." (p. 152) (Emphasis added.)

From the above it is quite apparent that in common carrier rail subsidiary certificate cases, neither the Commission nor this Court has considered that the precise "special circumstances" (inadequacy of independent motor carrier

service) existing in the *American Trucking Associations* case were the only ones which could justify the grant of "unrestricted authority". It is further apparent that the real test is whether the special facts of a particular case justify the grant of unrestricted authority as in the public interest. A look at the language and legislative history of the August 22, 1957 amendment to section 209(b) of the Interstate Commerce Act in Public Law 85-163 (set forth in Appendix A, p. 8, to our Brief), is just as convincing that Congress also did not intend to confine the Commission to the precise "special circumstances" of the *American Trucking Associations* case in granting as in the public interest, exceptional "unrestricted authority" to rail motor carrier subsidiaries in contract carrier application cases.

The form of the bill, later adopted as Public Law 85-163, as originally introduced would have lent some support to the contention of the Government that the Commission in contract carrier cases could consider as a "special circumstance" only the element of adequacy of other carrier service. Thus, as pointed out at page 44 of our Brief, the bill as introduced would have amended section 209(b) of the Interstate Commerce Act so as to permit the Commission to grant a contract carrier permit only where it found, among other things, "that existing common carriers are unwilling or unable to provide the type of service for which a need has been shown". But, as indicated at pages 44-46 of our Brief, the contract carriers felt that this established too rigid a pattern, in which view the Commission and the Senate Committee concurred. Accordingly, the above language was eliminated by the Senate Committee and by Congress, and, as a substitute, section 209(b) was amended by adding the following new sentence:

"In determining whether issuance of a permit will be consistent with the public interest and the national

transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

We think it is indeed significant that not only was the precise element of adequacy of other carriers' service eliminated as one of the criteria to be considered in determining whether a grant of a permit would be consistent with the public interest or the national transportation policy, but also the Commission was now enjoined to consider competing carriers only to the extent of taking into account "the effect which granting the permit would have upon the service of the protesting carriers". This, coupled with the facts that Congress refrained from prohibiting the grant of contract carrier permits to rail subsidiaries, and did not carry over the rigid section 5(2)(b) restriction applicable to them, would appear to be conclusive evidence that Congress did not intend any more rigid rule to be applied to them so far as granting exceptional unrestricted contract carrier permits was concerned than had theretofore been applied in connection with common carrier certificates.

This Court has twice adverted to the significance of the prior Commission practice in dealing with rail subsidiaries as a guide in determining the meaning of subsequently enacted amendments to the Interstate Commerce Act and as indicating congressional approval of that practice. *United States v. Rock Island Co.*, *supra*, 432; *American Trucking Associations, Inc. v. United States*, *supra*, 150. The Commission's practice prior to the 1957 amendment in

the cases in which it had granted contract carrier authority to rail subsidiaries certainly belies the idea that Congress by that amendment intended to restrict the Commission to any precise "special circumstances" in determining to what extent a contract carrier permit to a rail subsidiary should be restricted. Thus, as pointed out at pages 46-47 of our Brief, the Commission in 1942 had granted contract carrier authority to a rail subsidiary of the Pennsylvania Railroad which was totally unrestricted and not even confined to rail points (*Scott Bros., Inc., Extension of Operations—Jersey City*, 34 M.C.C. 163 (1942)); at various times from 1943 to 1955 the Commission had granted similarly unrestricted authority to PMT to serve Nevada off-rail points and California off-rail points for export; and the entire Commission, in its first decision of May 8, 1957, in the present case had granted the authority to PMT to serve Oregon rail points on Southern Pacific Lines, otherwise unrestricted, and without finding the precise "special circumstances" of the *American Trucking Associations* case.

Finally, in the light of competitive conditions in the transportation industry prevailing in 1957 and undoubtedly known to Congress, it can be presumed that Congress had no intent to require the Commission to apply any more strict rules in determining whether and to what extent a rail subsidiary was to be granted a contract carrier permit than the Commission had prior thereto applied in common carrier and contract carrier applications by such subsidiaries. The well-recognized purpose behind the imposition of any restrictions in these cases is to prevent rail monopoly of motor carrier transportation. This threat no longer existed in 1957 in anywhere near the degree it may have existed in 1935 and 1940, in the days of the infancy of motor trucking, when Congress first enacted

the restrictive policy of section 5(2)(b) of the Interstate Commerce Act applicable to rail acquisitions of motor carriers. Thus, in 1957 the railroads carried a much smaller percentage of the total inter-city traffic than they did in those earlier years. This is plainly shown by the following comparison of the percentages of total intercity ton miles of traffic handled by rail and by truck for 1940 and 1957:

	Rail	Truck (public and private)
1940 <sup>2</sup> .....	61.34%	7.91%
1957 <sup>3</sup> .....	46.31%	19.29%

Cogent recognition of this transportation revolution is given in the following excerpt from the "Review of Federal Transportation Policy", A Report to the President Prepared by the Presidential Advisory Committee on Transport Policy and Organization (1955) (p. 1):

*"Within the short span of one generation this country has witnessed a transportation revolution.—All elements of the economy have been profoundly affected—investors in transportation property, geographic regions, distribution, individual shippers, the taxpayer, the ultimate consumers of goods and services. As late as 1920, the railroads held a virtual monopoly of inter-city transportation with the exception of areas served by water. In striking contrast, there is available today a wide selection of transport methods for the movement of goods and people from one place to another with economy, expedition, and safety. The individual, whether traveling for recreation or business purposes, has a choice as between the private automobile, inter-city bus transportation, air transportation, and railroad travel. The shipper, distributing finished products to a nationwide market, is free to elect the use of*

2. 55th Annual Report of the Interstate Commerce Commission, p. 9.

3. 72nd Annual Report of the Interstate Commerce Commission, p. 10.



his own trucks, common or contract carriers by highway, a continental and physically integrated system of common carrier transportation by railroad, pipelines, coastal and intercoastal services, inland water transportation, or the rapidly developing air cargo services.

“ \* \* \* The net result is a competitive system of transportation that for all practical purposes has eliminated the monopoly element which characterized this segment of our economy some thirty years ago.”

**III. The Commission Found Adequate Special Facts Rationally Supporting Its Conclusion That the Grant of Authority to PMT, Even If It Be Considered Completely Unrestricted, Was in the Public Interest.**

The Commission admittedly did not find the existence of the precise “special circumstances” or unusual conditions of the *American Trucking Associations* case. For this reason it imposed the auxiliary and supplemental restriction confining PMT service to points on the lines of its rail parent, Southern Pacific Company (R-31). Nevertheless, we submit that even if this grant be considered, despite the above limitation, as completely unrestricted, the Commission found other special facts which rationally support, and therefore validate, its conclusion that such grant was in the public interest.

As appears from the quotations in the Commission's decisions in the two *Rock Island* cases, set forth above, the basic special facts which justify, as in the public interest, not imposing the usual auxiliary and supplementary restrictions are such as show that they are not needed in order to prevent undue restraint of competition of independently operated motor carriers. With this in mind it is plain that the special facts found in the present case

rationally support the Commission's grant of authority without the usual restrictions. Thus, the Commission found

(R. 20):

"\* \* \* Applicant has served General Motors as a contract carrier for a number of years<sup>4</sup> and a grant of the authority sought would enable it to furnish a needed enlarged service. Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse effect on existing motor carriers.

(R. 22):

"Applicant presently is providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California and to interstate points within the scope of its existing permits.

(R. 23):

"\* \* \* It [General Motors] alleges that the existing common carriers are unable to offer the personalized and integrated service provided by applicant; that the services of the existing contract carriers are in some instances dedicated to service for its competitors; and that none of these carriers is as conveniently located for receiving its production as applicant. Should the requested authority be denied, General Motors indicates that it will either support the application of an independent motor contract carrier presently serving a branch plant at Arlington, Tex., identified as Texas Auto Transports, Inc., for similar authority, or institute proprietary operations.<sup>5</sup>

4. In the earlier decision the Commission found (R. 59) that the present situation has prevailed for many years, it having commenced its contract-carrier service for Chevrolet in 1935 in intrastate commerce.

5. The Commission, of course, has no power to force General Motors to use any particular carrier or to prevent it from engaging in proprietary trucking. Obviously there would be no more competitive injury to the independent truck appellees from having PMT perform this service than from having some other truck line or General Motors perform it.

(R. 26-27) :

"\* \* \* We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers.

(R. 27-28) :

"\* \* \* However, it is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers."

**CONCLUSION**

For the foregoing reasons the argument of the Government is unsound and the decision of the lower court should be affirmed.

Respectfully submitted,

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**Certificate of Service**

I, ROBERT L. PIERCE, one of the attorneys for appellee herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 9th day of May, 1960, I served copies of the foregoing brief on the several parties as follows:

1. On appellants, American Trucking Associations, Inc., its Contract Carrier Conference, National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to Walter N. Bieneman, Esq., 2150 Guardian Bldg., Detroit 26, Michigan, to Larry A. Eskilsen, Esq., 1111 E Street, N.W., Washington 4, D. C., to Charles W. Singer, Esq., 1825 Jefferson Place, N.W., Washington, D. C., and to Peter T. Beardsley, Esq., 1424 Sixteenth Street, N.W., Washington, D. C.

2. On the United States, by mailing copies, in duly addressed envelopes, with airmail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C., and Willard R. Memler, Esq., Department of Justice, Washington 25, D. C.

3. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Robert W. Ginnane, Esq., General Counsel, and James Y. Piper, Esq., Assistant General Counsel, at the offices of the Commission, Washington 25, D. C.

4. On General Motors Corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Henry M. Hogan, Esq., 3044 West Grand Boulevard, Detroit 2, Michigan, to Walter R. Frizzell, Esq., 3044 West Grand Boulevard, Detroit 2, Michigan, to Beverley S. Simms, Esq., 612 Barr Building, Washington 6, D. C.

ROBERT L. PIERCE



# SUPREME COURT OF THE UNITED STATES

No. 74.—OCTOBER TERM, 1959.

American Trucking Associations,  
Inc., et al., Appellants,

v.

United States of America, Inter-  
state Commerce Commission,  
et al.

On Appeal From the  
United States Dis-  
trict Court for the  
District of Colum-  
bia.

[June 27, 1960.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The principal question presented on this appeal is whether the appellee Interstate Commerce Commission properly declined to impose certain restrictions upon motor carrier permits it issued to a trucking company which is a subsidiary of a railroad.

The permits in question are designed to allow appellee Pacific Motor Trucking Company, a wholly owned subsidiary of Southern Pacific Company, to perform a particular type of transportation service for appellee General Motors Corporation. Prior to issuance of these permits, Pacific Motor already had been authorized to conduct certain trucking activities in a number of States into which Southern Pacific's extensive railway system penetrates. Without adverting to immaterial details, that authority may be described as follows: Pacific Motor held common carrier certificates from the Commission for the transportation of commodities, by way of service auxiliary to and supplemental of Southern Pacific rail service, over routes paralleling Southern Pacific lines in Oregon, California, Nevada, Arizona, New Mexico, and Texas. It also held contract carrier authority from the State of California for intrastate transportation of trucks and auto-

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mobiles. Finally, it had been granted contract carrier permits by the Commission for the transportation of automobiles, trucks, and buses from certain points in California to three nonrail points in Nevada, to two points on the Mexican border, to certain points in Los Angeles Harbor, and to points in Nevada located on the Southern Pacific line. These latter contract carrier permits did not contain restrictions designed to make the ~~service~~ auxiliary to and supplemental of Southern Pacific rail service. Pacific Motor's only contract carrier shipper has been General Motors.

By the four applications which gave rise to the present controversy, Pacific Motor sought to extend the scope of its contract carrier service for General Motors. It requested authorization from the Commission for the transportation of new automotive equipment from plants of General Motors at Oakland, Raymer, and South Gate, California, to various interstate destinations not included within its prior permits. Generally speaking, the first application, designated *Sub 34*, covered contract carrier service from the Oakland plants to points on the Southern Pacific line in Oregon; the second, *Sub 35*, covered similar service to three Nevada nonrail points; the third, *Sub 36*, covered transportation from the Raymer plant to points in Arizona which are stations on the Southern Pacific line; and the last—and broadest—application, *Sub 37*, covered transportation from the Oakland, Raymer, and South Gate plants to points in seven States, whether or not on the Southern Pacific line.<sup>1</sup>

The Commission proceedings resulted in the grant of some, but not all, of the requested authority. On May 8,

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<sup>1</sup> With respect to the transportation from Oakland and Raymer, the States were Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico. The proposed transportation from South Gate was to be to the same States, excluding New Mexico but adding Montana.

1957, the Commission acted favorably on the *Sub 34* application. 71 M. C. C. 561. However, the Commission thereafter consolidated the four applications and heard oral argument. On September 9, 1958, the Commission issued its final report, 77 M. C. C. 605, which may be described specifically enough for our purposes as authorizing transportation by Pacific Motor to the three additional Nevada nonrail points and to points on the Southern Pacific line in Nevada, Utah, Arizona, Oregon, and New Mexico.<sup>2</sup> Otherwise, the applications were denied. There were certain other conditions imposed by the Commission, which we will detail later, but the major restriction was the limitation of points of destination to points on the Southern Pacific line.

Appellants—American Trucking Associations, Inc., its Contract Carrier Conference, the National Automobile Transporters Association, and six motor carriers—brought suit in Federal District Court to set aside the Commission's order. See 28 U. S. C. § 1336. Appellees Pacific Motor and General Motors intervened in support of the order. The United States was named a party defendant together with the Interstate Commerce Commission, but did not either participate in or oppose the defense. See 28 U. S. C. § 2323. A three-judge court, which was convened pursuant to 28 U. S. C. §§ 2325 and 2284, denied relief. 170 F. Supp. 38. Our appellate jurisdiction was invoked under 28 U. S. C. § 1253, and we noted probable jurisdiction. 361 U. S. 806. In this Court, the Commission opposes and the United States supports the appellants.

There is a preliminary challenge by Pacific Motor and General Motors to appellants' standing, a challenge which

<sup>2</sup> One Commissioner who concurred said that he would give broader authority; three Commissioners dissented from the grant; and of the three Commissioners who did not participate, one said that he would have joined the dissenters.

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was sustained by two members of the lower court. We disagree with this holding. Since the basis for our view on the problem of standing will be more readily appreciated after the merits of the case have been fully treated, we postpone our discussion of this matter.

The critical issue raised by appellants is whether the Commission exceeded its statutory authority by granting the permits in question to a railroad subsidiary without imposing more stringent limitations than it did. On this question, the lower court unanimously ruled against appellants. This judgment must be evaluated in the light of this Court's previous decisions, set against the background of Commission practice.

Both the Commission and this Court have recognized that Congress has expressed a strong general policy against railroad invasion of the motor carrier field. This policy is evinced in a general way in the preamble to the 1940 amendments to the Interstate Commerce Act—the National Transportation Policy, 54 Stat. 899—which articulates the congressional purpose that the Act be “so administered as to recognize and preserve the inherent advantages” of “all modes of transportation.” More particularly, Congress’ attitude is reflected by a proviso to § 5 (2) (b) of the Act,<sup>3</sup> which enjoins the Commission to withhold approval of an acquisition by a railroad of a motor carrier “unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.”

The Commission long ago concluded that the policy of the transportation legislation requires that the standards of § 5 (2) (b)—then § 213 (a) of the Motor Carrier

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<sup>3</sup> 54 Stat. 906, as amended, 49 U. S. C. § 5 (2) (b).

Act of 1935, 49 Stat. 555—be followed as a general rule in other situations, notably in applications for common carrier certificates of convenience and necessity under § 207.<sup>4</sup> *Kansas City Southern Transport Co., Common Carrier Application*, 10 M. C. C. 221 (1938). And this Court has confirmed the correctness of the Commission's conception of its responsibilities under both § 5 (2) (b) and § 207. See *United States v. Rock Island Motor Transit Co.*, 340 U. S. 419; *United States v. Texas & Pacific Motor Transport Co.*, 340 U. S. 450; *Interstate Commerce Comm'n v. Parker*, 326 U. S. 60. The Court has also taken cognizance of the congressional confirmation of the Commission's policy by the 1940 re-enactment in § 5 (2) (b) of the provisions of § 213 (a), after some of the pertinent Commission decisions had been specifically called to Congress' attention. See *United States v. Rock Island Motor Transit Co.*, *supra*, at 432. And although the instant proceeding involves contract carrier applications and hence falls under § 209,<sup>5</sup> the Commission in its opinion recognized that, for purposes of the relevance of the § 5 (2) (b) standards, there is no distinction between this type of case and proceedings arising under § 207. 77 M. C. C. 621-622. Nor can we discern any grounds for differentiation.

Thus it is evident that the policy of opposition to railroad incursions into the field of motor carrier service has become firmly entrenched as a part of our transportation law. Moreover, this general policy fortunately has not been implemented merely by way of a more or less unguided suspicion of railroad subsidiaries, but rather has evolved through a series of Commission decisions from embryonic form into a set of reasonably firm, concrete

<sup>4</sup> 49 Stat. 551, 49 U. S. C. § 307.

<sup>5</sup> 49 Stat. 552, as amended, 49 U. S. C. § 309.



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standards.\* The Commission's opinion in the case at bar describes these standards as follows:

"The restrictions usually imposed in common-carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point not a station on the railroad, (3) a key-point requirement or a requirement that shipments transported by motor shall be limited to those which

\* The first major Commission decision was rendered the year after the Motor Carrier Act of 1935. *Pennsylvania Truck Lines, Inc.—Barker Motor Freight, Inc.*, 1 M. C. C. 101. "In refusing approval of an acquisition unless certain conditions were met, a division of the Commission stated:

"[W]e are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of section 213 . . . is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public." *Id.*, at 111-112.

The development of Commission policy is traced in detail in *Rock Island Motor Transit Co.—White Line Co.*, 40 M. C. C. 457. See also the similar and lengthy discussion in *United States v. Rock Island Co.*, *supra*, *passim*.

it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail. (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to, or supplemental of, train service. . . ."

The key phrase in this summary is obviously "auxiliary to or supplemental of train service." If a trucking service can fairly be so characterized, it is clear enough that there is compliance with the mandate of § 5 (2)(b) that the carrier should be able "to use service by motor vehicle to public advantage in its operations." But if, on the other hand, the motor transportation is essentially unrelated to rail service, the railroad parent is invading the field of trucking, and, under normal circumstances, the National Transportation Policy is thereby offended.

It is this "auxiliary to or supplemental of" verbalization of the policy of § 5 (2)(b), as applied to § 207, that has found favor in this Court. See *American Trucking Assns. v. United States*, 355 U. S. 141; *United States v. Rock Island Motor Transit Co.*, *supra*; *United States v. Texas & Pacific Motor Transport Co.*, *supra*; *Interstate Commerce Comm'n v. Parker*, *supra*. Moreover, while the Court has not specified the more particularized restrictions which it might regard as essential constituents of the "auxiliary to or supplemental of" concept, it is significant that the Court in *Rock Island* apparently accepted the Commission's view that the phrase implies a limitation

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of function, i. e., type of trucking service, and not merely a geographical limitation, i. e., place where the service is performed.<sup>7</sup> 340 U. S., at 436-444.

<sup>7</sup> "The Commission asserts that the meaning of 'auxiliary and supplemental' . . . was not geographical.

"What was in the Commission's mind as to the meaning of auxiliary and supplemental at the time it issued its certificate, we cannot be sure. At present a motor service is auxiliary and supplemental to rail service, in the Commission's view, when the railroad-affiliated motor carrier in a subordinate capacity aids the railroad in its rail operations by enabling the railroad to give better service or operate more cheaply rather than independently competing with other motor carriers. . . . The Commission has continually evidenced its intention to have rail-owned motor carriers serve in auxiliary and supplemental capacity to the railroads.

"The Commission has expressed its policy . . . by the phrase, perhaps too summary, auxiliary and supplemental. Though the phrase is difficult to define precisely, its general content is set out in *Texas & Pacific Motor Transport Co. Application*, 41-M. C. C. 721, 726 [establishing generally the same conditions set forth in the text, *supra*, p. —] . . . While the practice of the Commission has varied in the conditions imposed, the purpose to have rail-connected motor carriers act in coordination with train service has not. . . ." 340 U. S., at 439, 442-443.

See the detailed discussion in *Rock Island Motor Transit Co.—White Line*, 40 M. C. C. 457. ("[T]here . . . appears to have developed a tendency in rail-motor acquisition proceedings to treat the *Barker* case restrictions as geographical or territorial only in their intent rather than as substantive limitations upon the character of the service which might be rendered by a railroad or its affiliate under any acquired right. . . . *Id.*, at 470.) See also *Texas & Pacific Motor Transport Co. Application*, *supra*, at 726. ("Since petitioner's certificates limit the service to be performed to that which is auxiliary to or supplemental of the rail service of the railway, it is without authority to engage in operations unconnected with the rail service. . . . To the extent petitioner is performing or participating in all-motor movements on the bills of lading of a motor carrier and at all-motor rates, it is performing a motor service in competition with the rail service and the service of existing motor carriers; and,

But while the judicial and administrative current has run strongly in favor of auxiliary and supplemental restrictions on motor carrier subsidiaries of railroads, the Commission has determined, and this Court has agreed, that the public interest may sometimes be promoted by not imposing such limitations. A prime example is *American Trucking Assns. v. United States, supra*, where the trucking service was not being performed adequately by independent motor concerns. We there observed that the mandatory provisions of § 5 (2)(b) do not appear in § 207, and approved the Commission's policy of not attaching auxiliary and supplemental restrictions where "special circumstances" prevail. We concluded:

"We repeat . . . that the underlying policy of § 5 (2)(b) must not be divorced from proceedings for new certificates under § 207. Indeed, the Commission must take 'cognizance' of the National Transportation Policy and apply the Act 'as a whole.' But . . . we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a § 207 proceeding." 355 U. S., at 151-152.

These, then, are the guiding principles which have been established by what has gone before and which mark the range of our inquiry in this case. Since, as we have indicated, the Commission believes, and we agree, that there is no relevant difference between a § 207 proceeding and a § 209 proceeding so far as the problem here involved is concerned, the decisive questions are: (1) Did the Commission impose conditions upon the permits issued to

to the extent it is substituting rail service for motor-vehicle service, the rail service is auxiliary to or supplemental of the motor-vehicle service rather than the motor-vehicle service being auxiliary to or supplemental of rail service.")

Pacific Motor under which the service to be rendered would be truly auxiliary to and supplemental of Southern Pacific's rail service? (2) If not, was the Commission's waiver of such restrictions justified by "special circumstances"?

The first question need not detain us long. The principal permits were qualified only by the following conditions: (1) the service was to be restricted to points which are stations on the Southern Pacific line; (2) "there may from time to time in the future be attached to the permits . . . such reasonable terms, conditions, and limitations as the public interest and national transportation policy may require"; and (3), Pacific Motor was to request the imposition of restrictions upon its outstanding certificates with respect to the transportation of automobiles and trucks.

The last restriction was designed to obviate any dual operation problem under § 210,\* and is not pertinent to the auxiliary and supplemental standard. See 77 M. C. C., at 624. The second condition obviously is no restriction at all on present operations, and hence can hardly be said to limit the trucking to an auxiliary or supplemental service. We so recognized in *American Trucking Associations*, where the certificates contained a similar restriction. 355 U. S., at 154. And the first limitation, upon which appellees principally rely, is but a geographical, not a functional, restriction. As we have noted, *Rock Island* gives strong support to the view there expressed by the Commission that the essence of auxiliary and supplemental limitation is functional control. While it may be true, as appellees argue, that such a geographical limitation is a necessary ingredient of an auxiliary and supplemental restriction, it does not by any means follow that this ingredient makes the whole. Moreover, we have

\* 49 Stat. 554, as amended, 49 U. S. C. § 310.



the strongest evidence that the Commission did not believe that it did, since the Commission specifically refrained from imposing the most general, but obviously the most significant, restriction—that “the service by motor vehicle . . . should be limited to service which is auxiliary to or supplemental of rail service.” 77 M. C. C., at 623. The conclusion seems inescapable that the conditions imposed upon the permits to Pacific Motor, though undoubtedly “restrictions” in a general sense, were not limitations sufficient to hold Pacific Motor to a truly auxiliary and supplemental service.

Appellees urge that nonetheless there were “special circumstances” within the meaning of *American Trucking Associations*. Appellees point to various findings of fact by the Commission, such as the need of General Motors for a service of the type here involved, Pacific Motor's experience and qualifications, and the unlikelihood that a significant amount of traffic would be diverted from rail to motor transportation even if the permits were granted. The difficulty with appellees' argument is that the Commission did not find that considerations of this nature constituted “special circumstances” under the *American Trucking Associations* rule, but rather viewed them simply as supporting the basic determinations which it was required to make under § 209 (b) in order to issue a contract carrier permit to *any* applicant.\* And naturally we

\* Section 209 (b) provides in pertinent part:

“Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in the Interstate Com-

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should not substitute our judgment for the Commission's on a matter like this, for "[t]he grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." *Securities & Exchange Comm'n v. Chenery Corp.*, 318 U. S. 80, 87.

The Commission assigned but a single reason for not imposing the normal restrictions upon the Pacific Motor permits: to do so would compel Pacific Motor to conduct a common carrier service. Appellees support this decision upon the ground that the Commission is without authority under § 209 (b) to impose such character-destroying conditions upon a contract carrier permit.<sup>10</sup> We need not determine whether the Commission possesses the power to attach such limitations, or, in the alternative, to award a common carrier certificate, since we believe that, in any event, the Commission's reason is insufficient

*merce Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements.* . . . (Emphasis added.)

The italicized portion was added by an amendment of August 22, 1957, 71 Stat. 411, well before the Commission's decision of September 9, 1958. Consequently, the Commission was required to apply the new standards. *Ziffryn, Inc. v. United States*, 318 U. S. 73, 78.

<sup>10</sup> Section 209 (b) provides in part that the Commission "shall attach to [the permit] . . . such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier . . . as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out . . . the requirements established by the Commission under section 304 (a) (2) and (6) of this title . . . ."

justification for its action. Assuming that the restrictions which would limit Pacific Motor's operations to an auxiliary and supplemental service would also be incompatible with a contract carrier operation, and that the Commission was consequently powerless to impose those restrictions, this alone does not, in our view, meet the "special circumstances" test. There is, for example, no finding that independent contract carriers were unable or unwilling to perform the same type of service as Pacific Motor. In such a situation we do not believe that the policy of the Act allows the Commission to authorize service by Pacific Motor, limited only to points on the Southern Pacific line, simply because General Motors wants a contract carrier operation. If that desire of General Motors, in combination with the policy of the Act, disables a railroad subsidiary from obtaining the business, that is simply the result of the National Transportation Policy.<sup>11</sup> This consequence, we believe, does not meet the compelling public interest standard established by *American Transportation Associations*. A contrary conclusion would open the door to approval of over-the-road contract trucking by railroad subsidiaries to most, if not virtually all, major destinations, and hence would greatly attenuate the safeguards which have been painstakingly erected to prevent railroad domination of trucking. Appellees say that these safeguards are no longer needed, because independent trucking is no longer an "infant industry." This is an immaterial argument in this

<sup>11</sup> "Such restrictions hamper railroad companies in the use of their physical facilities—stations, terminals, warehouses—their personnel and their capital in the development of their transportation enterprises to encompass all or as much of motor transportation as the roads may desire. The announced transportation policy of Congress did not permit such development." *United States v. Rock Island Motor Transit Co.*, *supra*, at 443-444.

forum. We do not condemn the wisdom of the Commission's action. We simply say that the transportation legislation does, and that the pardoning power in this case belongs to Congress.

Thus the decision of the District Court must be reversed, because we conclude that the Commission fell into error of law. The question then arises whether there should be a remand which permits further proceedings. Appellants argue that there should not be, because the Commission, according to appellants, found that there were no special circumstances aside from the alleged impossibility of imposing the usual restrictions upon a contract carrier. It is true that the Commission based the rail-point restriction upon "the absence of any showing of unusual conditions." 77 M. C. C., at 623. But we cannot be certain that the Commission thereby intended to say that there were no special circumstances within the meaning of the *American Trucking Associations* principle. As we have pointed out, the rail-point restriction, standing alone, is different in kind from limitations which impose an auxiliary and supplemental service. Consequently, we cannot be sure that the Commission believes the same sort of circumstances determine the applicability of both types of restrictions. Moreover, the Commission's discussion of this point is open to the interpretation that it was repeating some of its conclusions with respect to the § 209 (b) standards, *e. g.*, "the effect which granting the permit would have upon the services of the protesting carriers." See note 9, *supra*.<sup>12</sup> Under these circumstances, we would be warranted in precluding further proceedings only if, by an independent search of the

<sup>12</sup> The rail-point limitation appears to have been designed primarily to prevent encroachment upon the business of competing rail carriers. Various railroads opposed the grant of authority before the Commission, but did not join in the federal court action.

record, we were able to conclude that, as a matter of law, there are no factors present which the Commission could have regarded as special circumstances. Although the findings of the Commission which are reflected in its opinion do not seem to us to comply with the *American Trucking Associations* standard, as the silence of the Commission seems to imply, we are unwilling in a complicated proceeding of this nature to deal with this problem *ab initio* or to say that the Commission could not have made additional findings on the basis of the evidence had it been aware that the ground its decision rested upon was insufficient. Consequently, under the particular circumstances of this case, we believe that it should be remanded to the Commission so that it can apply what we hold to be the applicable principles in such further proceedings as it may find to be consistent with this opinion.

The reversal and remand, however, will not include one aspect of the Commission's action—the grant of authority to provide a service to three nonrail points in Nevada—which is not governed by the rationale of our opinion. This small segment of the controversy has been submerged in the dispute over the much broader permit covering transportation to rail points in various States. It is obvious, of course, that “special circumstances” would have to be present to justify this Nevada award. Appellees maintain that there was such justification, and appellants have not established that it was lacking. Nor do we perceive any other reason to upset this award. Consequently, we affirm with respect to this particular permit.

There remains only the question of standing. Although the three-judge court concluded that the Commission had not exceeded its authority in this case, two members of the court also believed that “there was no showing of actual or anticipated direct injury such as would entitle



[the appellants] to institute this action." 170 F. Supp. at 48. In support of this conclusion, appellees rely principally upon *Atchison, T. & S. F. R. Co. v. United States*, 130 F. Supp. 76, aff'd *per curiam*, 350 U. S. 892. That decision held that certain railroads had no standing to challenge a Commission order authorizing acquisition by one motor carrier of others. Since the lower court in *Atchison* stressed the fact that the Commission there had not created any additional motor carrier service, the decision clearly is not in point. In the instant case, not only has the Commission created new operating rights, but they are rights in which appellants have a stake. And surely the statement by General Motors that it would not in any event give the business to any appellant cannot deprive appellants of standing. The interests of these independents cannot be placed in the hands of a shipper to do with as it sees fit through predictions as to whom its business will or will not go. The decision we believe to be controlling is not *Atchison*, but rather *Alton R. Co. v. United States*, 315 U. S. 15, where the Court confirmed the standing of a railroad to contest the award of a certificate to a competing trucker. We conclude, then, that appellants had standing to maintain their action to set aside the Commission's order under the "party in interest" criterion of § 205 (g) of the Interstate Commerce Act, 49 Stat. 550, 49 U. S. C. § 305 (g), and under the "person suffering legal wrong . . . or adversely affected or aggrieved" criterion of § 10 (a) of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. § 1009 (a).

Our disposition of the case makes it unnecessary to consider the other issues raised by appellants.

We have no desire to hamper the Commission in the discharge of its heavy responsibilities, and we have always recognized that the Commission has been given a wide discretion by Congress. But that discretion has limits; our decision in favor of the Commission in *American*

*Trucking Associations* established the limits relevant to this case; and we conclude that those limits have been transgressed. Of course, in remanding the case we do not intend to circumscribe the Commission in determining whether appropriate "special circumstances" do exist in this instance which would take the case out of the otherwise conventional standards.

The judgment of the District Court is reversed and the case is remanded to that court with directions to remand to the Commission for such further proceedings, not inconsistent with this opinion, as may be appropriate.

*It is so ordered.*